Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 212

HENRY FORD, GEORGE HARRIS, J. EVELETH, ET AL., PETITIONERS,

vs.

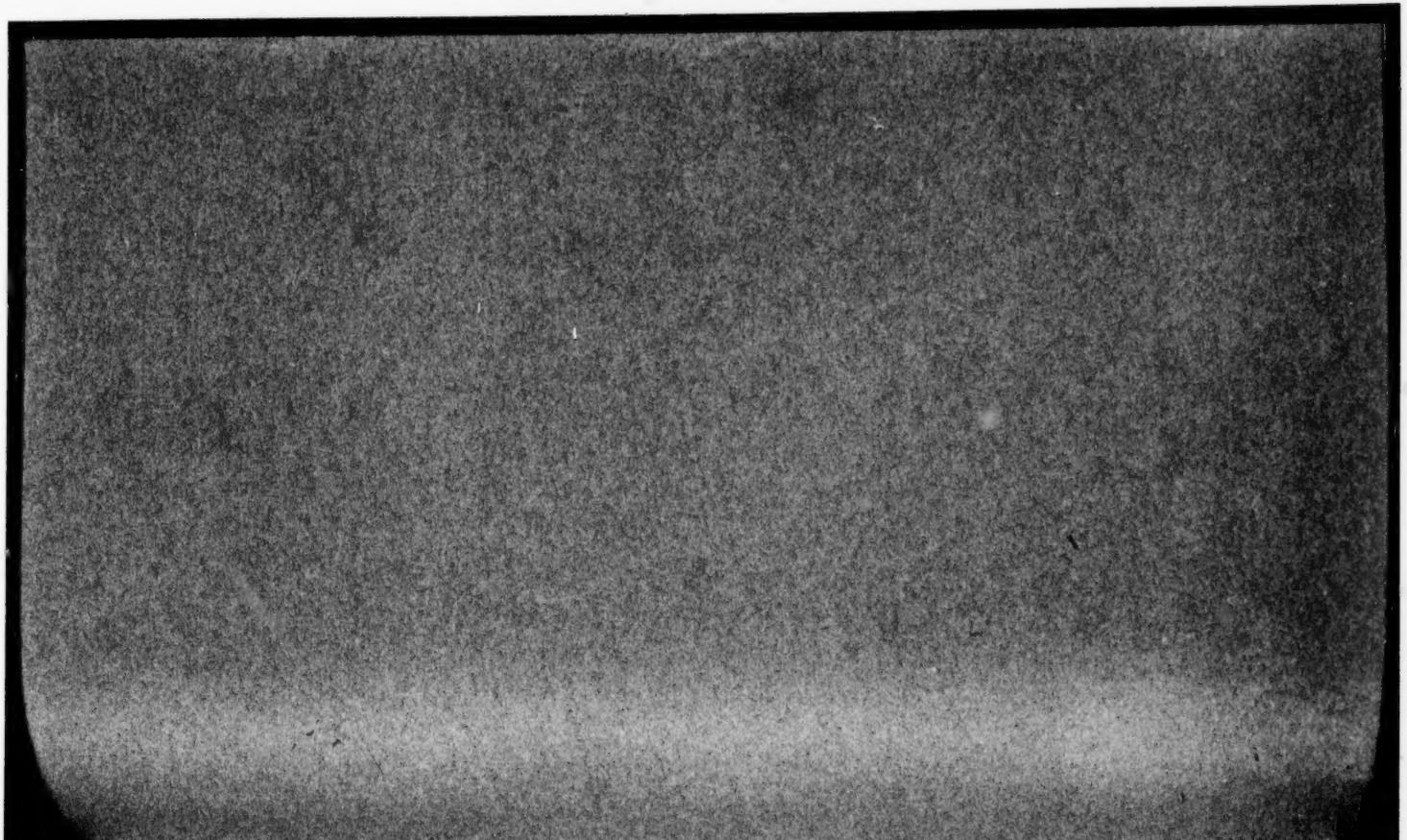
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 31, 1936

CERTIORARI GRANTED APRIL 20, 1936

(21,733)



(31,768)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES OF ATTORNEYS OF RECORD.

For Defendants and Plaintiffs in Error:

KENNETH M. GREEN, Esq., HAROLD C. FAULKNER, Esq., JAMES B. O'CONNOR, Esq., and NATHAN C. COGHLAN, Esq., San Francisco, California.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Francisco.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO and C. H. BELLANGER,

Defendants.

PRAECIPE FOR A TRANSCRIPT OF RECORD OF WRITS OF ERROR.

To the Clerk of Said Court:

Sir:

Please prepare certified transcript on writs of error of Geo. Ford, George Harris and J. Evelyn and

Vincent Quartararo and C. H. Bellanger, of the following pleadings, papers and orders:

1. Indictment.
2. Verdict of jury.
3. Motion for a new trial of George Ford, George Harris and J. Evelyn.
4. Motion for a new trial of Vincent Quartararo.
5. Motion for a new trial of C. H. Bellanger.
6. Motion in arrest of judgment of George Ford, George Harris and J. Evelyn.
7. Motion in arrest of judgment of Vincent Quartararo.
8. Motion in arrest of judgment of C. H. Bellanger.
9. Sentence and judgment.
10. Bill of exceptions as settled by trial Judge.
11. Petition for writ of error of:
    - (a) George Ford, George Harris and J. Evelyn,
    - (b) Vincent Quartararo.
    - (c) C. H. Bellanger.
12. Order allowing writ of error of:
    - (a) George Ford, George Harris and J. Evelyn.
    - (b) Vincent Quartararo.
    - (c) C. H. Bellanger.
13. Assignment of errors.
14. Bonds of costs of:
    - (a) George Ford, (b) George Harris, (c) J. Evelyn.

(d) Vincent Quartararo, (e) C. H. Bellanger,

15. Supersedeas of: [1*]
    (a) George Ford, (b) George Harris, (c) J. Evelyn,
    (d) Vincent Quartararo, (e) C. H. Bellanger.
16. Writ of error of:
    (a) George Ford, George Harris and J. Evelyn.
    (b) Vincent Quartararo.
    (c) C. H. Bellanger.
17. Citation on writ of error of:
    (a) George Ford, George Harris and J. Evelyn.
    (b) Vincent Quartararo.
    (c) C. H. Bellanger.
18. Praecipe for certified transcript.
19. Motion to quash indictment on behalf of defendants, George Ford, George Harris, J. Evelyn, Vincent Quartararo and C. H. Bellanger.
20. Demurrer on behalf of defendants, George Ford, George Harris, J. Evelyn, Vincent Quartararo and C. H. Bellanger.
21. Motion to exclude evidence.
22. Order overruling motion to exclude evidence.
23. Opinion of trial Judge on motion to exclude evidence.
24. Affidavit of C. Howell on motion to exclude evidence.

*Page-number appearing at foot of page of original certified Transcript of Record.

25. Order that one engrossed bill of exceptions may be used on each separate writ of error.
26. Order for transfer of original exhibits.
27. Stipulations and orders extending time to engross and settle bill of exceptions, and amendments thereto.
28. Stipulations and orders enlarging the return day on writ of error and citation on writ of error.
29. Order of Court overruling the demurrer, denying motion to quash indictment and motion to suppress evidence.
30. Stipulation and order that one bill of exceptions and one assignment of errors may serve on behalf of all defendants.

Dated: May 19th, 1925.

KENNETH M. GREEN,
NATHAN C. COGHLAN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
Attorneys for Defendants.

[Endorsed]: Filed May 21, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [2]

(INDICTMENT.)

In the Southern Division of the United States District Court for the Northern District of California, First Division.

At a stated term of said court begun and holden in the city and county of San Francisco within and for the Southern Division of the Northern District of California, on the first Monday of November, in the year of our Lord one thousand nine hundred and twenty-four.

The Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California duly impaneled in and for the term of said court begun and holden on the second Monday in July in the year one thousand nine hundred and twenty-four, and duly and regularly continued in session by order of court made and entered in the premises prior to the expiration of said July term of court, for the purpose of considering this and other cases, do on their oaths allege, find, charge and present:

I.

That heretofore, to wit, on the 28th day of October, 1919, the Congress of the United States of America passed an Act entitled: "An Act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the develop-

ment of fuel, dye and other lawful industries," the short title of which Act is "National Prohibition Act," and which said Act at all of the times hereinafter mentioned was and is now in full force and effect. [3]

II.

That heretofore, to wit, on the 21st day of September, 1922, the Congress of the United States of America passed an Act entiled, "an Act to provide revenue to regulate commerce with foreign countries, to encourage the industries of the United States, and for other purposes," the short title of which Act is "Tariff Act of 1922," and which said act at all of the times hereinafter mentioned was and is now in full force and effect.

III.

That heretofore, to wit, on the 22d day of May, 1924, the countries of Great Britain and the United States of America entered into ratified and exchanged ratifications of a convention, agreement and treaty for the prevention of smuggling of intoxicating liquors into the United States and which said convention, agreement and treaty at all the times herein mentioned was and is now in full force and effect.

IV.

That by, under and pursuant to the provisions of said National Prohibition Act, and particularly by Section 3 of Title II thereof, it is provided:

"No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell,

barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

V.

That by, under and pursuant to the provisions of said Tariff Act of 1922, and particularly by Section 593, [4] Subdivision (b) thereof, it is provided:

"If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury."

VI.

That by, under and pursuant to the provisions of said convention, agreement and treaty between

the United States and Great Britain, and particularly Article II thereof, it is provided:

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British Flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. [5] When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions, for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than

the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised."

VII.

That during all of the times herein mentioned Farallone Islands were and now are owned and possessed by the United States; that said Farallone Islands are located at a point in the Pacific Ocean approximately due west of the city and county of San Francisco, State of California, United States of America, and at a distance approximately twenty-five miles from the said city and county of San Francisco. [6]

VII.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present: THAT

GEO. FORD
F. W. TAYLOR
F. McLEOD
J. Y. PHILLIPS
W. HASTIE
R. GARDINER
CARL NEILSEN
JOHN V. LLOYD
RUSSEL WHITELAW
GEORGE WILLIAM MORGAN
JAMES HUNTER
NATHAN BELL
ISIDORE JACK KLEIN

JOSEPH BROOKS
DAVID SANFORD
MARK ROGERS
THEODORE GOLDBOOM
ALBERT LOFTUS McLELLAN
VINCENT QUARTARARO
MAURICE DEHEON
GEO. HARRIS
J. McQUEEN
R. GISBORNE
G. WINTERBURN
B. JAMES
J. McLENNAN
EMILIO PENSOTTI
MARINO CRIVELLO
GEORGE GARDINER
WILLIAM JOHN LEVIN
CHARLES HORACE BELANGER
DAVID ZIMMERMAN
FRANK WEBSTER
J. EVELYN
H. McVEY
R. C. SHIELS
A. CAVANAUGH
J. McLENNAND
J. McCLUSKIE
ROBERT DUNCAN
SAMUEL BRONFMAN
ROBERT FIDDES
OILER BESNER
WILLIAM NATHAN ZIMMERMAN
F. R. ANDERSON

SALVADORE CRIVELLO
R. BRUCE
C. GRANT
J. H. MASON
E. SARGENT
F. H. THIBODEAU
JACK ALLEN
E. McKENZIE
E. W. MALINQUIST
HUGH DAVIS
HARRY BARNES
WILLIAM GESNER
HENRY REIFEL
MAX RIPSTEIN
JACOB DIAMOND

hereinafter called the defendants, and divers other persons to this Grand Jury and these Grand Jurors unknown, did at the bay of San Francisco, within the district and division aforesaid, and within the jurisdiction of this court, on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States that is to say:

(a) To wilfully, unlawfully, feloniously and knowingly sell, transport, import, deliver, furnish

and possess [7] within the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one percentum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of the Act of October 28, 1919, known as the "National Prohibition Act," and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended for use for beverage purposes in violation of said Act and said Treaty;

(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States, and to assist in importing and bringing into the United States merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, subdivision (b) of the Tariff Act of 1922, and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended to be imported and brought into the said United States in violation of said Acts and Treaty.

IX.

And the Grand Jurors aforesaid, on their oaths

aforesaid, do further allege, charge, find and present:

That said conspiracy, combination, confederation and agreement between the said defendants and said divers other persons whose names are as aforesaid to these Grand Jurors and this Grand Jury unknown, was continuously throughout [8] all of the time from and after on or about the 1st day of January, 1924, and at all of the times thereafter and herein mentioned and referred to, and particularly at the time and times of the commission and consummation of each and all of the overt acts in this indictment set forth and up to and including the time of the filing of this indictment in existence and process of execution.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

X.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present: That in pursuance of said conspiracy, combination, confederation and agreement herein in this indictment set out, and to effect and accomplish the object thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof;

(a) Said defendants and each of them did at Vancouver, B. C., in the month of September, 1924, cause the steamer "QUADRA" to be loaded with about 12,000 cases of intoxicating liquor, to

wit, whiskey, champagne, wine, gin and beer, and did cause said steamer "QUADRA" with said cargo of intoxicating liquor on the 10th day of September, 1924, to leave said port of Vancouver, B. C., and proceed to a point opposite and within a distance of less than twelve miles fro· said Farallone Islands and which said distance could be traversed in less than one hour by said steamer "QUADRA" and by the motor-boats hereinafter mentioned, for the purpose and with the intent of then and there unloading, selling, delivering, furnishing, transporting and importing and bringing into the United States said cargo of intoxicating [9] liquor, to wit, whiskey, champagne, wine, gin and beer, which was then and there fit for use and intended for use for beverage purposes within the United States; that from and at said point said defendants did then and there wilfully, unlawfully and fraudulently unload, furnish and deliver from said vessel at said point a portion of said cargo of intoxicating liquors on to and upon motor-boats "903 B," "C–55," "Marconi," "California," "Ocean Queen" and divers other motor-boats whose names and masters are to this Grand Jury and these Grand Jurors unknown, well knowing that said motor-boats operated by their masters would and did transport, deliver, import and bring into the United States, and within the jurisdiction of this court, said portion of said cargo of intoxicating liquor, to wit, whiskey, champagne, wine, gin and beer, then and there containing one-half of one per centum and more of alcohol

by volume and fit for use and intended for use for beverage purposes within the United States, and which said unloading, furnishing, delivering, transporting, and importing and bringing into the United States of said intoxicating liquor by said defendants and on said motor-boats was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, subdivision (b) of Section 593, of the Tariff Act of 1922, and of the Convention, Agreement and Treaty between the United States and Great Britain of May 22, 1924, and intended for use in violation of said acts and each of them and said treaty.

(b) Said defendants and each of them did on the 29th day of September, 1924, and while the steamer "QUADRA" was at anchor opposite the said Farallone Island, possess, [10] load upon, deliver and furnish to the motor boat "903 B" from said steamer "QUADRA" one bourbon barrel No. 73 containing one hundred gallons of intoxicating liquor, to wit, whiskey, then and there containing one-half of one per centum and more of alcohol by volumn which was then and there fit for use and intended for use for beverage purposes within the United States, and that said defendants did cause said bourbon barrel of whiskey to be transported, imported and brought into the United States, to wit, in the city and county of San Francisco, State of California, and within the jurisdiction of this court, on said 29th day of September, 1924, and

that the possession, loading, delivering, furnishing, transporting, importing and bringing into the United States of said intoxicating liquor by said defendants at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, and of subdivision (b) of Section 593 of the Tariff Act of 1922 and intended for use for beverage purposes in violation of said acts and each of them.

(c) Said defendants and each of them did on October 11th, 1924, and while the steamer "QUADRA" was at anchor opposite the said Farallone Islands possess, load upon, deliver and furnish to the motor *boar* "903B" from said steamer "QUADRA" intoxicating liquor, to wit:

62—10 gallon kegs of alcohol,
5 cases gin, 12 bottles to each case,
2 cases brandy, 12 bottles to each case,
24 sacks whiskey, 12 bottles to each sack,
5 sacks Vermouth, 12 bottles to each sack,

then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for [11] use and intended for use for beverage purposes within the United States and that said defendants Jack Allen and Carl Neilson did thereupon and upon said day and by means of said motor-boat "903–B" transport, import and bring into the United States, to wit, into San Francisco Bay said intoxicating liquor and that the possession, loading, delivering, furnishing, transporting, and bringing into the United States of said intoxicating

liquor by defendants at the time and in the manner aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act, and of subdivision (b) of Section 593 of the Tariff Act of 1922, and intended for use for beverage purposes in violation of said Acts and each of them.

(d) Said defendants and each of them on October 12, 1924, and while the steamer "QUADRA" was opposite the said Farallone Islands and within a distance from said Farallone Islands that could be traversed by said steamer "QUADRA" in less than one hour and within a distance from said Farallone Islands that could be traversed by motor-boat "C–55" hereinafter mentioned in less than one hour, did possess, load upon, deliver and furnish to the motor-boat "C–55" from said steamer "QUADRA" intoxicating liquor, to wit:

89 sacks whiskey, 12 bottles to each sack,
1 case beer, 22 pt. bottles,

then and there containing one-half of one per centum and more of alcohol by volume which was then and there fit for use and intended for use for beverage purposes within the United States and that said defendants Emillio Pensotti and [12] E. McKenzie did thereupon and upon said day and by means of said motor-boat "C–55" attempt to transport, import and bring into the United States and within the jurisdiction of this court, to wit, into San Francisco Bay said intoxicating liquor, but were prevented from so doing by the arrest of

said Emillio Pensotti and E. McKenzie and the seizure of said motor-boat "C-55" by duly appointed, qualified and acting officers of the Coast Guard of the United States, and that the possession, loading, delivering, furnishing, transporting and attempt to bring into the United States, of said intoxicating liquor by said defendants at the time and in the manner aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, known as the National Prohibition Act and of subdivision (b) of Section 593 of the Tariff Act of 1922 and intended for use for beverage purposes in violation of said Acts and each of them.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

STERLING CARR,
United States Attorney.

A true bill.

PERRY EYRE,
Foreman.

[Endorsed]: Presented in Open Court and Ordered Filed Nov. 20, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [13]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

DEMURRER TO INDICTMENT.

Come now Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, Emelio Pensotti, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Charles Horace Belanger, Vincent Quartararo, E. McKenzie, some of the defendants in the above-entitled action, and each individually and separately protest their and each of their innocence of all the acts alleged against them in the indictment herein, and especially reserving and in nowise waiving their or either of their rights to plead "not guilty" to said indictment, demur and except to such indictment and for their demurrer and exception thereto urge and say:

I.

That said indictment does not state facts sufficient to constitute an offense against the laws of

the United States of America and particularly against the provisions of Section 37 of the Criminal Code of the United States, and/or against the provisions of the "National [14] Prohibition Act," and particularly Section 3, Title II, thereof and/or against the Tariff Act of 1922 and particularly Section 593, subdivision "B" thereof, and/or against the Convention, Agreement and Treaty with the United States and Great Britain and particularly Article 2 thereof, particularly set forth in the indictment on file herein.

II.

The above-entitled court has not now and never has had jurisdiction of the subject matter of said indictment and of the acts alleged therein, in this: That the acts and all of them alleged to have been committed in said indictment on the part of these defendants and each of them occurred at a place beyond and without the territorial limits of the United States, occurring at a greater distance than a marine league, or three geographic miles, from the low-water mark of the shore-line of the United States and of the Farallone Islands.

III.

That said court has not now and has never had jurisdiction of the persons of these demurring defendants and each of them in this: That they are not now and never have been within the territorial limits of the United States or its possessions (except upon being arrested outside of the jurisdiction of the United States and being by force brought into said jurisdiction and arrested) and said defend-

ants and each of them are now and and at all of the times herein mentioned have been subjects and citizens of Great Britain and the British Empire and of his Britannic Majesty; and said defendants and each of them were arrested while on a British vessel on the high seas, sailing and registered under and pursuant to the laws of Great Britain and owing allegiance to the Sovereign Power of Great Britain and no other Sovereign, and at a place more than a marine league, or [15] three geographic miles, from the low-water mark of the shores of the United States and the Farallone Islands.

IV.

That said indictment is defective because, except by mere conclusion of the pleader, it does not state facts sufficient to bring the cause within the purview of Section 37 of the Criminal Code of the United States and/or the "National Prohibition Act," Section 3, Title 2, thereof, and/or the Tariff Act of 1922, Section 593, subdivision "B" thereof, and/or the Convention, Agreement and Treaty between the United States and Great Britain, particularly Article 2 thereof.

V.

That said indictment is duplicitous, because in its language the defendants are charged with a conspiracy to commit three separate and different offenses having little or no connection with each other.

VI.

That said indictment is duplicitous, because in it is alleged the defendants are charged with a conspiracy to do eight separate and distinct acts in vio-

lation of the "National Prohibition Act" and to do four different acts in violation of the Tariff Act of 1922 and said treaty between the United States and Great Britain above referred to.

VII.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom how or in what manner the conspiracy alleged to have been effected in paragraph VIII of said indictment on the first day of January, 1924, at the bay of San Francisco, within the district and division above described, which said conspiracy is in said paragraph VIII alleged to have been [16] in existence continuously at said place up to the time of filing said indictment, could have existed in the manner alleged in said paragraph VIII, when all of the acts of said defendants in said indictment, alleged in paragraph X thereof, occurred at Vancouver, British Columbia, and on the high seas from British Columbia to a point as in said indictment alleged opposite and within a distance of less than 12 miles from said Farallone Islands, and when all of the acts of these demurring defendants are alleged to have occurred in said paragraph X out of the bay of San Francisco and out of the jurisdiction of the above-entitled court.

VIII.

That said indictment is uncertain in this: That it does not appear in said indictment, nor can it be ascertained therefrom, how or in what manner these demurring defendants could be conspiring in the bay of San Francisco, in the district above des-

cribed, in the months of September and October, to do any act or thing in violation of the laws of the United States, when it appears in said indictment that said demurring defendants were and each of them are alleged to have been at Vancouver, British Columbia, and on the high seas and at a point within 12 miles of the Farallone Islands and without territorial jurisdiction of the United States.

IX.

That said indictment is uncertain in this: That it cannot be ascertained therefrom how or in what manner the facts alleged in subdivision "a" paragraph X thereof could effect or accomplish the object of the conspiracy in said indictment alleged, or could be in pursuance of the conspiracy in said indictment alleged. [17]

X.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, how or in what manner the facts alleged in subdivision "b" of said paragraph X could be in pursuance of the conspiracy in said indictment alleged, or could effect and/or accomplish the object thereof; that said subdivision "b" is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner or by what means the barrel of whiskey therein alleged to have been loaded upon, delivered and furnished to the motor-boat "903–B" at the place in said indictment alleged from said steamer "QUADRA," was transported and/or imported and/or brought into the United States, to wit:

into the city and county of San Francisco, State of California, and within the jurisdiction of this court, or how or in what manner the defendants or either of them were connected with the transportation of said barrel of whiskey after having loaded upon, delivered and furnished same to said motor-boat "903–B."

XI.

That said indictment is uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner the acts alleged in subdivision "C" of said paragraph X were in pursuance of said conspiracy and/or effected and/or accomplished the object thereof. That said subdivision "C" is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, what connection, if any, these demurring defendants had with the motor-boat "903–B," in said subdivision "C" mentioned, or with the transportation of the liquor alleged to have been loaded thereon, after the loading of said liquor on said motor-boat "903–B" from said steamer "QUADRA." [18]

XII.

That said indictment is uncertain in this: It does not appear therein, nor can it be ascertained therefrom, how or in what manner the acts alleged on the part of these defendants in subdivision "D" of said paragraph X of said indictment were in pursuance of said conspiracy in said indictment alleged, and/or effected and/or accomplished or could effect or accomplish the object thereof.

XIII.

That said indictment is further uncertain in this: It does not appear therein, nor can it be ascertained therefrom, except from the legal conclusion of the pleader, how or in what manner the acts alleged in subdivision "A" of paragraph X were then and there prohibited, unlawful and in violation of Section 3 of Title 2 of the Act of Congress of October 28, 1919, known as the "National Prohibition Act," and/or subdivision "B" of Section 593 of the Tariff Act of 1922, and/or the Convention, Agreement and Treaty between the United States and Great Britain of May 22, 1924, or either of said acts or any of them.

XIV.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, other than from the legal conclusion of the pleader, how the acts set forth in subdivision "B," "C" and "D," and each or either of them in said paragraph X of said complaint, were or how either was prohibited, unlawful and in violation of Section 3, Title 2, of the Act of Congress of October 28, 1919, known as the "National Prohibition Act" and of subdivision "B" of Section 593 of the Tariff Act of 1922, and/or how the liquor in said subdivision mentioned were or either of it was by these defendants or any of them intended for use for beverage purposes in violation of said or either of said acts. [19]

XV.

That said treaty between the United States and

Great Britain in said indictment referred to was and is unlawful in this: The same is in violation of the Eighteenth Amendment to the Constitution of the United States. That said treaty is void in this: That one of the contracting parties thereto, viz.: His Britannic Majesty was and is without power to enter into said treaty and/or enter into said treaty waiving the rights of any of His subjects, or any citizen of the British Empire, guaranteed to them under Magna Charta and/or the basic law or the laws of Great Britain.

XVI.

That said treaty in said indictment referred to is void and of no effect as to these demurring defendants for the reason that it is violative of the law of Nations and is not a part of the law of Nations.

XVII.

That said indictment is uncertain in this: That it does not appear therein, nor can it be ascertained therefrom, how or in what manner or by what means these defendants or either of them are or could be affected by the treaty between Great Britain and the United States therein set forth.

XVIII.

That in said indictment it does not appear, nor can it be ascertained therefrom, whether these defendants or either of them were or are subjects of Great Britain, and thus to be affected by the treaty between the United States and Great Britain therein referred to.

XIX.

That said indictment is uncertain in this: that it does not appear therein, nor can it be ascertained [20] therefrom, whether the steamer "QUADRA" in said indictment referred to, or any other vessel, ship or motor-boat in said indictment referred to, was at any time in said indictment referred to a private or any vessel under the British flag, outside the limits of the territorial waters of the United States, its territories or possessions, or if said steamer "QUADRA" or any of said steamers, vessels or motor-boats in said indictment referred to were at any time sailing under British registry.

WHEREFORE, defendants pray that said indictment be dismissed; that the bail of defendants be exonerated and that defendants be permitted to go hence without a day; and for such other or further order as to the Court may seem proper in the premises.

KENNETH M. GREEN,
Attorney for Said Defendants.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION TO QUASH.

Now come the defendants, Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Charles Horace Belanger and Vincent Quartararo, Emilio Pensotti, E. McKenzie, by their counsel, and move the above-entitled court that the indictment returned in said cause, be quashed and held to be naught for the following reasons:

First: Said indictment does not sufficiently present a violation of any of the penal laws of the United States of America so as to apprise these defendants or either of them with what offense they or either of them stand charged with having committed.

Second. Said defendants and each of them specially except to said indictment for the reason that there is now pending against them and on file herein, Indictment No. 15,829 charging them and all of them (save defendant Vincent Quartararo) with the same offense arising out of the same acts set forth and included and relied upon in the indictment herein moved to be quashed and held for naught.

Third. The defendants specially except to said indictment [22] because the same was returned against them and all of them (save defendant Quartararo) without sufficient or any evidence being presented to the Grand Jury returning said indictment showing the violation by them of the penal laws of the United States of America or an offense of any kind against the laws of the United States of America.

Fourth. Said defendants specially except to said indictment on the ground the same was returned in a term of this Court other than the term in which the Grand Jury returning said indictment was impaneled, and that the term of said Grand Jury was not extended in accordance with the provisions of law providing for the extensions of a term of the Grand Jury.

Fifth. That said indictment fails to allege that the steamer "Quadra" and/or the motor-boats "*93–B,*" and/or "C–55," and/or "Marconi" and/or "California" and/or "Ocean Queen," and/or divers other motor-boats referred to in said indictment are British vessels under the British flag.

Sixth. That said indictment does not disclose on its face if said steamer "Quadra" and/or the motorboats particularly referred to in the preceding paragraph, were or either of them was outside the limits of the territorial waters of the United States of America, its territories or possessions.

Seventh. That said indictment does not state facts sufficient to constitute an offense against the laws of the United States of America and particularly against the provisions of Section 37, of the Criminal Code of the United States, and/or against the provisions of the "National Prohibition Act," and particularly Section 3, Title II, thereof, and/or against the Tariff Act of 1922, and particularly Section 593, subdivision "B" thereof, and/or against the Convention, Agreement and Treaty with the United States and [23] Great Britain, and particularly Article 2 thereof, particularly set forth in the indictment on file herein.

Eighth. The above-entitled court has not now and never had jurisdiction of the subject matter of said indictment and of the acts alleged therein, in this: That the offense alleged to have been committed in said indictment on the part of these defendants and each of them, occurred at a place beyond and without the territorial limits of the United States, occurring at a greater distance than a Marine league from the low-water mark of the shore-line of the United States and of the Farallone Islands.

Ninth. That said indictment fails to show how or in what manner these defendants or either of

them could and/or did conspire to violate the terms of the treaty in said indictment referred to.

Tenth. That said indictment fails to show how or in what manner or by what means, jurisdiction to proceed against these defendants or either of them under the treaty referred to in said indictment could be or is conferred upon the above-entitled or any court of the United States of America.

WHEREFORE, these moving defendants respectfully pray that this indictment be quashed and held for naught.

KENNETH M. GREEN,
Attorney for Moving Defendants.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [24]

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION TO EXCLUDE AND SUPPRESS EVIDENCE.

To the Honorable, the above-entitled Court:

The petition of Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Emelio Pensotti, E. McKenzie, Charles Horace Belanger and Vincent Quartararo, respectfully shows:

That they are defendants in the above-entitled action.

That your petitioners Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibordeau, R. Gardiner, J. McLennan and J. McCluskie, are now and at all times herein mentioned were citizens of the United Kingdom of Great Britain and Ireland and her dominions, and subjects of His Britanic Majesty, King George "V," and at all times herein mentioned, comprised the officers and crew of the steamship "Quadra," hereinafter mentioned and described. [25]

That the said steamship "Quadra," is now and at all of the times herein mentioned, was and ever

since said steamship was launched has been, a vessel of British registry, and that during all of the said times has been operated as such.

That the said steamship "Quadra" at all of the times hereinafter mentioned was capable of a maximum speed of nine (9) miles per hour, and no more, and is not owned in whole or in part by any citizen of the United States.

That on the 12th day of October, 1924, at the hour of 11:20 o'clock A. M., A. T. S. on said day, said steamship "Quadra" was laid to on the high seas off the coast of the State of California, United States of America, at a point at a greater distance than 12 miles from the coast of the United States, its territories and possessions, and at a greater distance from the coast of the United States, its territories and possessions, and particularly the Farallone Islands, than could be traversed in one hour by the said steamship "Quadra," and at a greater distance from the coast of the United States, its territories and possessions and particularly from the Farallone Islands, than could be traversed in one hour by the motor-boats "903–B," "C–55," "Marconi," "California," or "Ocean Queen," or any or either of said motor-boats.

That on the said 12th day of October, 1924, while said steamship "Quadra" was laid to at the time and place aforesaid, said steamship "Quadra" was boarded by a prize crew consisting of officers and men from the United States coast guard cutter, "Shawnee," which said prize crew did then and there over the protest of said defendant George

Ford, who was then and there in command of said steamship "Quadra," and under threats of use of violence and in violation of the law of nations and the rights of the said steamship "Quadra," and her officers and crew upon the high [26] seas, and in violation of the Convention, Agreement and Treaty between the United States of America and Great Britain entered into and ratified on the 22d day of May, 1924, and without the consent of said defendant George Ford, or any of his officers and crew, and in violation of their rights as British subjects, against their will, and without any search-warrant, order of Court, or warrant for the arrest of said defendants, or any of them, and without witnessing the commission of any violation of any law of the United States on the part of said defendants or any of them, and in violation of said defendants' constitutional rights guaranteed them by the fourth and fifth amendment to the Constitution of the United States, seized said steamship "Quadra," in the name of the Government of the United States, as evidence of violations of certain laws of the United States in the indictment on file herein more particularly set forth, and made fast aboard said steamship "Quadra," a line from said United States coast guard cutter "Shawnee."

That the said defendants, George Ford, George Harris, and J. Evelyn, were then and there the captain, first officer and second officer, respectively, of the said steamship "Quadra," and were then and there and for several years prior thereto had been

competent navigators, holding British Board of Trade certificates as such.

That the said defendants, George Ford and George Harris, then and there held and now hold, masters' certificates issued by said British Board of Trade, entitling them to navigate and command British vessels of any tonnage in any waters on the high seas; that said defendant J. Evelyn, then and there held and now holds a British Board of Trade certificate entitling him to act as a navigating officer on British vessels of any tonnage in any waters on the high seas. [27]

That at the hour of 11:50 A. M., A. T. S., on said 12th day of October, 1924, and just before the tow-line from the United States coast guard cutter "Shawnee," was placed aboard the said steamship "Quadra" as aforesaid, the said defendants, George Ford, George Harris and J. Evelyn, verified the position of the said steamship "Quadra," by cross-compass bearings between a point on the said coast of California, designated upon the chart of said coasts issued by the United States Government, as Point Reyes, and a point on said chart designated as North Farallone Rocks, by a vertical angle of said Point Reyes, which is designated on said chart as being 597 feet in height, and by an ex-meridian altitude of the sun, which said observations all coincided and placed the position of said steamship "Quadra" at said time and place, at latitude 37°–49½′ north, and longitude 123°–22½′ west, which said position of said steamship "Quadra" was then and there according to said chart, 13½

miles west 1/2 south of the most western of the said North Farallone Rocks, which said rock was then and there the nearest United States territory.

That at the time said observations were taken by said officers of the said steamship "Quadra" as aforesaid, the officers comprising a part of the prize crew from the said United States coast guard cutter, "Shawnee," were invited to the bridge of said steamship "Quadra," and asked by said defendant George Ford, to verify the position of said steamship "Quadra," as ascertained by said defendants George Ford, George Harris and J. Evelyn, as aforesaid. That said officers of said prize crew then and there refused and declined to do so.

That thereafter and at the hour of 12:27 P. M., A. T. S., of said day, the said United States coast guard cutter [28] "Shawnee," over the protest of said defendant George Ford, and under threats of use of force and in violation of the law of nations and the rights of the said steamship "Quadra" and her officers and crew upon the high seas, and in violation of the Convention, Agreement and Treaty between the United States of America and Great Britain, entered into and ratified on the 22d day of May, 1924, and without the consent of said defendant George Ford, or any of his officers or crew, and in violation of their rights as British subjects, against their will, and without any search-warrant, order of Court, or warrant for the arrest of said defendants or any of them, and without witnessing the commission of any violation of any law of the United States on the part of said defendants or any

of them, and in violation of said defendants' Constitutional rights guaranteed them by the fourth and fifth amendment to the Constitution of the United States, proceeded to tow, and did tow the said steamship "Quadra," into the port of San Francisco, and into the territorial jurisdiction of the United States of America and into the jurisdiction of the above-entitled court, and they profess to hold said steamship "Quadra," together with the cargo therein contained, against the will of your petitioners, as evidence of violations of certain laws of the United States in the indictment on file herein more particularly set forth.

That the officers of the United States Coast Guard Service, the Collectors of Customs for the Northern District of California, and the United States Attorney for the Northern District of California, propose to use the said steamship "Quadra" and her cargo, together with the facts concerning the seizure thereof, as evidence at the trial of the above-entitled cause, and that by reason thereof and the facts herein set forth, the defendants' rights as British subjects, [29] and under the law of nations, and under the terms of the treaty hereinbefore referred to, and the defendants' rights under the fourth and fifth amendments to the United States Constitution, have and will be violated, unless the Court order the said steamship "Quadra," with all its cargo, together with all knowledge derived from the seizure of same, excluded from evidence at the trial of said cause.

WHEREFORE, said defendants, Geo. Ford, Geo. Harris, J. Evelyn, R. Bruce, F. W. Taylor, J. McQueen, H. McVey, C. Grant, F. McLeod, R. Gisborne, R. C. Shiels, J. H. Mason, J. Y. Phillips, G. Winterburn, A. Cavanaugh, E. Sargent, W. Hastie, B. James, J. McLennand, F. H. Thibodeau, R. Gardiner, J. McLennan, J. McCluskie, Emelio Pensotti, E. McKenzie, Charles Horace Belander and Vincent Quartararo, pray that the United States Attorney, marshal, clerk, Collector of Customs, and the coast guard officers, be notified, and that the Court direct and order that the said steamship "Quadra," together with her cargo, be excluded from evidence against them at the trial of said cause, together with all knowledge derived from the seizure of the same.

KENNETH M. GREEN,
Attorney for said Defendants. [30]

State of California,
City and County of San Francisco,—ss.

George Ford, being first duly sworn, deposes and says:

That he is one of the defendants in the above-entitled action and one of the petitioners named in the foregoing petition; that he makes this verification for and on behalf of said petitioners; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters, that he believes it to be true.

GEORGE FORD.

Subscribed and sworn to before me this 28th day of November, 1924.

[Seal] JOHN WISNOM,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [31]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plantiff,

vs.

GEORGE FORD et al.,
Defendants.

AFFIDAVIT OF C. F. HOWELL.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

C. F. Howell being first duly sworn, deposes and says: That he is now and at all of the times herein mentioned was Lieutenant Commander, United States coast guard, in command of the coast guard cutter "Shawnee";

That on the 12th day of October, 1924, and while he was in command of said coast guard cutter

"Shawnee" as aforesaid, he seized the steamship "Quadra" referred to in the petition of George Ford and others, and the motion to exclude and suppress evidence in the above-entitled action, and the motor-boat "C–55" and caused said steamship "Quadra" and said motor-boat "C–55" to be brought into the bay of San Francisco and turned over the customs department of the treasury department; that at the time of the seizure of said steamship "Quadra" and said motor-boat "C–55" they were and each of them was at a point off the coast of the State of California, United States of America, which was and is less than twelve miles from the coast of the United States, its territories and possessions, and at a distance from the coast of the State of California, United States [32] of America that could be traversed in less than one hour by said steamship "Quadra" and in less than one hour by said motor-boat "C–55"; that at said time and at said place said motor-boat "C–55" was transporting intoxicating liquor, to wit, whiskey and other liquors and said steamship "Quadra" was transporting intoxicating liquor, to wit, whiskey and other liquors.

C. F. HOWELL.

Subscribed and sworn to before me this 5th day of December, 1924.

[Seal] C. M. TAYLOR,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Dec. 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [33]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 5th day of January, in the year of our Lord, one thousand nine hundred and twenty-five, Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 15829, No. 15831, No. 15914, No. 15915.

UNITED STATES OF AMERICA

vs.

GEO. FORD et al.

MINUTES OF COURT—JANUARY 5, 1925—ORDER DENYING MOTIONS TO EXCLUDE EVIDENCE Etc., AND ORDER OVERRULING DEMURRERS.

Pursuant to oral opinion this day rendered, IT IS ORDERED that the motions to exclude certain evidence, the motions to suppress certain evidence, and the motions to quash indictment be and the same are hereby denied. Further ordered that the demurrers to indictment be and same are hereby overruled.

Thereupon counsel for defendants entered exceptions to said orders.

Page 408, Vol. 58, Book of Minutes. [34]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

Nos. 15914, 15915, 15829, 15831.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

(OPINION.)

January 5, 1925.

Hon. STERLING CARR, U. S. District Attorney, for the plaintiff;

KENNETH M. GREEN, Esq., attorney for certain defendants;

FRANK J. HENNESSY, Esq., attorney for certain defendants.

PARTRIDGE.—This is a motion to exclude and suppress evidence. The defendants are charged with a violation of the National Prohibition Act and the Tariff Act of 1922, and also with a conspiracy to violate those acts. As overt acts, the indictments charge that in pursuance of the conspiracy, defendants loaded the steamer "Qua-

dra," at Vancouver, with a large quantity of liquor for delivery here. She sailed to a point opposite San Francisco, on the high seas, and, it is alleged, de[illegible]ered to various smaller vessels considerable quantities of liquor, which these boats landed on our shores.

The "Quadra" was seized by the Government boats, brought into this port, and her cargo of liquor removed to Government warehouses. Her officers and crew were arrested, and, together with various other persons, are the defendants in these cases. [35]

The affidavit of the defendants, on the motion to suppress, alleges that the "Quadra" was boarded and seized more than four leagues from shore, and further *ont* than she could sail in an hour. The captain of the Government vessel, on the other hand, makes oath that she was within an hour's steaming. For the purposes of this opinion, I assume that the Government official states the facts.

The question, then, squarely presented, is this: Where the Government seizes a vessel, charged with violation of our laws, more than one league and less than four from land, can the vessel and her cargo be used as evidence in a criminal prosecution.

The question presented is one of the utmost importance. This Nation has, by a constitutional amendment, and appropriate legislation, declared that intoxicating liquors shall no longer be sold or distributed here. That change in our

fundamental charter, and the accompanying legislation, has brought about a condition never even approached in the whole history of criminal jurisprudence. The violators apprehended run into the thousands in this district alone, and there is every reason to believe that only a very small percentage of those who violate the law are caught and charged. Such a condition has congested our courts to such a degree that it is almost impossible to cope with the situation. The delay resulting from this overwhelming condition has encouraged other thousands, not alone in persistent violation of this law, but in the most open and brazen defiance of our Government and its courts. Moreover, respect thus lost, and fear of punishment diminished or postponed, has bred in the minds of thousands, especially among the ignorant and illiterate of our foreign-born population, a contempt of all law and all authority—so that it is not too much to say that the traffic in illicit liquor is the nursery of crime of every description. [36]

Bearing upon the question of this traffic and having reference to a condition that arose in San Francisco, it is said that, "There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But, as it leads to neglect of business and waste of property and general demoralization,

it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram-shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. The sale of such liquors in this way has therefore been, at all times, by the courts of every state, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited."

Crowley vs. Christensen, 137 U. S. 86, at page 90.

Any American vessel, or American citizen engaging in this traffic, is of course, liable to seizure and arrest. So, great organizations have arisen who conduct this illicit business in foreign ships, manned by foreign officers and [37] crews. They approach our shores as nearly as they dare, lie to, and transfer their cargoes to small swift boats. In recognition of this situation, the United

States and Great Britain, on May 22, 1924, entered into a Treaty, the pertinent provisions of which are as follows:

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British Flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

"(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

"(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected or endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than

the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the [38] distance from the coast at which the right under this article can be exercised."

But was such a convention necessary?

In the case of Church vs. Hubbard, 2 Cranch, 187, the question involved was an insurance policy on a vessel, which excepted from its terms seizure by the Portuguese government for illicit trade. At that time (1804) Portugal prohibited all trade of any kind or character whatsoever with her colonies and dependencies, one of which was Brazil. The vessel insured was fitted out for the express purpose of trading illicitly with Rio de Janiero. The vessel was seized five leagues (fifteen miles) from the shore and was condemned by the Portuguese authorities at Rio.

In the suit on the policy it was claimed that this was not a condemnation in illicit trade for the reason that the seizure of the vessel was illegal and contrary to the law of nations and constituted a mere trespass and act of unlawful violation by a foreign government. Chief Justice Marshall, however, disposed of that contention as it deserved, holding that the power of a government to seize a vessel hovering off the coast for the express purpose of violating the laws of that country was not limited to those waters over which that nation could properly be said to exercise sovereignty. He points out, likewise, that our own statute in existence at that time, and still in existence (Sec.

3067 R. S., Act of March 22, 1799, Chap. XXII, 1 Stat. at Large, 658) makes it lawful to search and seize any vessel violating our revenue laws within four leagues (twelve miles) of the shore. The Chief Justice says:

"That the law of nations prohibits the exercise of any act of authority over a vessel in the situation of the 'Aurora,' and that this seizure is, on that account, a mere [39] marine trespass, not within the exception, cannot be admitted. To reason from the extent of protection, a nation will afford to foreigners, to the extent of the means it may use for its own security, does not seem to be perfectly correct. It is opposed by principles which are universally acknowledged. The authority of a nation, within its own territory, is absolute and exclusive. The seizure of a vessel, within the range of its cannon, by a foreign force, is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory. Upon this principle, the right of a belligerent to search a neutral vessel on the high seas, for contraband of war, is universally admitted, because the belligerent has a right to prevent the injury done to himself, by the assistance intended for his enemy; so too, a nation has a right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right, is an injury to itself, which it may prevent, and it has a right to use the means necessary for its prevention. These means

to not appear to be limited within any certain marked boundaries, which remain the same, at all times and in all situations. If they are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, they will be submitted to.

"In different seas, and on different coasts, a wider or more contracted range, in which to exercise, the vigilance of the government, will be assented to. Thus, in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by [40] *by* vessels, but for the purpose of illicit trade, the vigilance of the government may be extended somewhat farther; and the foreign nations submit to such regulations as are reasonable in themselves, and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions."

The Supreme Court of Canada has held that even irrespective of any treaty, the Dominion had a right, under the law of nations, to pursue and take a vessel beyond the three-mile limit, when that vessel was charged with the infraction of her laws.

In the matter of the ship "North" (37 Canada Supreme Court, 385), the vessel was charged with

fishing in Canadian waters, contrary to the statutes of the Dominion. She was pursued and captured beyond the three-mile limit. The "North" was an American vessel.

The Supreme Court of Canada holds that by the principles of international law, she could be brought into a Canadian court and condemned. The Court was of the opinion that this could be done even under the well-recognized principles of international law, but further held that if it could be construed to be a breach of international law, that was not a matter affecting the jurisdiction of the Court, but was a matter for the protest of the government of the ship.

The case of Hudson vs. Guestier, 6 Cranch (U. S.), 281, was an action of trover for coffee and logwood, the cargo of the brig "Sea Flower," which had been captured by the French for trading to the revolted ports of the Island of Hispaniola, contrary to the ordinances of France, and carried into the Spanish port of Baracoa, but condemned by a French tribunal at Guadaloupe, and sold for the benefit of the captors, and purchased by the defendant. [41] The trial Court directed the jury "that if they find from the evidence produced, that the brig 'Sea Flower' had traded with the insurgents at Port au Prince, in the island of St. Domingo, and had there purchased a cargo of coffee and logwood, and, having cleared at the said port, and coming from the same, was captured by a French privateer, duly commissioned as such, within six leagues of the island of St. Heneague,

a dependency of St. Domingo, for a breach of said municipal regulations, that in such case the capture of the 'Sea Flower' was legal, although such capture was made at the distance of six leagues from the said island of St. Domingo, or St. Heneague, its dependency, and beyond the territorial limits or jurisdiction of said island, and that the said capture, possession, subsequent condemnation, and sale of the said 'Sea Flower,' with her cargo devested the said cargo out of the plaintiffs, and the property therein became vested in the purchaser."

In affirming a judgment for the defendant, the Court said: "Considering it, then, as settled that the French tribunal had jurisdiction of property seized under a municipal regulation, within the territorial jurisdiction of the government of St. Domingo, it only remains for me to say whether it will make any difference if, as now appears to have been the case, the vessel were taken on the high seas, or more than two leagues from the coast. If the *res* can be proceeded against when not in the possession or under the control of the Court, I am not able to perceive how it can be material whether the capture were made within or beyond the jurisdictional limits of France, or in the exercise of a belligerent or municipal right. By a seizure on the high seas she interfered with the jurisdiction of no other nation, the authority of each being there concurrent." This case overruled Rose vs. Himely, 4 Cranch (U. S.), 241, wherein it was [42] held that a vessel could

not be seized on the high seas, outside territorial jurisdiction, for a breach of a municipal regulation."

See, also, Cucullu vs. Louisiana Ins. Co., 5 Mart. N. S. (La.) 464, wherein the Court said: "Strictly speaking, the authority of a nation cannot extend beyond her own territory. By the common consent of nations this authority has been enlarged, where the sea *in* the boundary, to the distance of a cannon shot from the shore. Within these limits foreigners are protected, and prize*d* cannot rightfully be made of their vessels by enemies. But the right of the nation to protect itself from injury, by preventing its laws from being evaded, is not restrained to this boundary. It may watch its coast, and seize ships that are approaching it with an intention to violate its laws. It is not obliged to wait until the offense is consummated before it can act. It may guard against injury, as well as punish it. If, indeed, in the exercise of this right an unreasonable range was taken, other nations might object. But so long as it is confined to the seizure of vessels entering the port for which they are destined, it will not, it is presumed, form a just ground of complaint. Our own legislation authorizes revenue cutters to visit vessels four leagues from the coast: And the Acts of Congress on this subject are a clear expression of the opinion of our government that nothing in the law of nations prohibited them to confer such power on its cruisers." See Rev. Stat. U. S., Sec. 2760, 6 Stat. Anno. 781."

In England there has been in existence since 1736 (9 Geo. II, Chap. 35) a statute called "The British Hovering Act." That statute assigns a jurisdiction of four leagues from the coast, by prohibiting foreign goods from transshipping within that distance, without payment of duties. It may be noted that it is the same as the Act of 1799 in the [43] United States and that both of these statutes have been declared repeatedly to be consistent with the law and usage of nations. An example is The Coquitlan, 57 Fed. 706. This latter case was in the Supreme Court, 163 U. S. 346, although the matters determined were rather questions of procedure than jurisdiction. It is notable, however, that the point passed upon by the lower court with reference to the jurisdiction was not urged and it is further noted that the "Coquitlan" when captured, was thirty miles from land.

As is pointed out by Saunders (Maritime Law, page 79) a ship can only be called a part of the territory to which she belongs in that she carries with her the laws of her own nation "for the government of those on board in their mutual relations to each other." It is equally true, however, that she is subject to the laws of the country of her nationality only if she is in lawful navigation. (Manning's Law of Nations, 117.) But this ship was not in lawful navigation. The very purpose of her voyage was to transgress the laws of a friendly nation, and to assist the citizens of that nation to break those laws. As pointed out by

Daniel Webster, in his letter to Lord Ashburton (quoted by Mr. Justice Field in U. S. vs. Rodgers, 150 U. S. 264), the law and jurisdiction of a nation accompany its ships, not alone upon the high seas, but into the ports and harbors of foreign countries. But he also concedes, that by the law of nations, the officers and crew are answerable for offenses against the laws of the country where the ship may be.

"Who is the sovereign *de jure* or *de facto* of a territory, is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government." Jones vs. U. S., 137 U. S. 212. [44]

So, Great Britain has waived her sovereignty over the rum-runners who infest our shores, if they be found within an hour's run. She has recognized that it is beneath the dignity of a great nation to extend protection to her citizens when they see fit to engage in the enterprise of assisting the citizens of another in the wholesale violation of its laws. It is intolerable that ships of foreign nations should violate, and render nugatory—nay, boldly defy—our laws, and assist persons clearly within our jurisdiction so to do. It is the merest sophistry to say that when a foreign ship has a cargo of liquor in her hold in the high seas, she is doing no more than she has a right to do. The thing she really does is to aid and assist persons within our jurisdiction in the bold and con-

temptious defiance of our laws—and then claim immunity because a part of the crime is committed by a foreign vessel more than one marine league from our shores.

On that question there is a recent decision of the United States Circuit Court of Appeals for the Fourth Circuit: Latham vs. United States, decided October 21, 1924, and not yet reported. The language in that case is significant, particularly this part:

"One who ranges along the land or water line of any country with the design of aiding in the subversion of its laws challenges that country to enforce its laws and assumes the risk of his own mistakes and action of wind and tide and all the forces of nature. * * *

"Thus the defendants aided and abetted the persons to whom they sold in selling the whiskey in the United States contrary to its laws. * * *

"The defendants being under arrest in the United States, it makes no difference that they were outside the jurisdiction when by aiding and abetting they become principals in crime committed in the United States." [45]

But there is another complete answer to the contentions of the defendants. These offenses can be fairly said to have been committed by them upon American ships upon the high seas. The transportation of liquor is a crime. Can it be said that the delivery by the mother ship to the smaller vessel is not aiding and assisting that crime? If so, and there seems no escape from it, all who assist are principals.

But a crime committed within any state must be tried within that state; yet, a crime not committed within any state may be tried at such place as Congress may be law have directed—Const., Art. 382—6th Am. Rev. Stat. 730: "The trial of all offenses committed upon the high seas or elsewhere, out of the jurisdiction of any particular State of District, shall be in the District where the offender is found, or into which he is first brought."

In the brief, however, it is said that the crime is committed beyond our territorial limits, and therefore beyond the jurisdiction of this Court.

It is, of course, elementary, that where a crime is committed partly in one jurisdiction and partly in another, the venue may be laid in either place.

A dramatic illustration of that may be found in Lord Macaulay's account of the trial of the Seven Bishops: also reported in 12 State Trials, 183. In that case, the seven bishops were charged with having published a seditious libel against the king. When brought to trial, it appeared, when the matter first came before the jury that as a matter of fact, the libel was written outside the county of Middlesex. As the trial went on, however, Lord Sunderland was produced as a witness and testified that while the libel was written outside the county of Middlesex, it was presented to the king in London. It was held that jurisdiction was in either place. [46]

So, if money obtained by false pretenses is sent by letter at the request of the accused, the crime is committed both where the letter is posted and where it is received. Regina vs. Jones, 1 Den. 551.

A case in our own Supreme Court everyone will remember is People vs. Botkin, 132 Cal. 232. That case was one in which the defendant had mailed in San Francisco, certain poison candy, sent to persons in New Jersey and from eating which, they died. It was held that jurisdiction could be had either in the place where the candy was sent or where the persons died from eating it.

So, where property is stolen in one county and removed to another by the thief, venue may be laid in either county. 2 Russel on Crime, 6th Edition, 285.

So, it is well-settled that a person who procures the commission of an offense, commits the offense in the place where the act is done, the commission of which he has procured, although he himself never was in that place. Rex. vs. Johnson, 7 East. 65.

These defendants, moreover, are charged with conspiracy. Conspiracy may be tried in the place where the conspirators agreed to the wrongful act, which is the object of the conspiracy; or in any jurisdiction where one of the overt acts is committed. Rex vs. Brisac, 4 East. 164. And is again settled by this case of Latham vs. United States.

Of course, no one would desire that ships at sea should be generally subject to search by any foreign power. The facts of our own history, which readily occur to anyone, would negative this. The celebrated passages of Thomas Carlyle in "Frederick the Great," with reference to Jenkins' ear, kept in cotton for eight years "with a kind of ursine piety or other dumb feeling," and finally produced in Parliament to the awakening of war, come as read-

ily to mind. [47] But a general search on the high seas is a very different thing from a reasonable search at a reasonable distance from shore, to prevent and punish foreigners from a violation of our laws, and assistance to our own citizens in violating them.

I conclude, therefore:

(1) The seizure of the vessel was not in contravention of the law of nations, but in strict accord with the treaty with Great Britain.

(2) Her officers and crew were apprehended in the violation of the laws of the United States.

(3) Being so engaged, the Court of the District into which they were brought has jurisdiction of the cause.

(4) The evidence, having been lawfully secured, cannot be suppressed or returned.

Let the motions be denied and the demurrers overruled.

[Endorsed]: Filed Jan. 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [48]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

THE UNITED STATES OF AMERICA

vs.

FORD, et al.

We the Jury, find as to the defendants at the bar as follows:

Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo. Harris—Guilty, W. Hastie—Not Guilty, B. James—Not Guilty, J. H. Mason—Guilty, J. McCluskie—Not Guilty, E. McKenzie—Guilty, Thos. J. McClellland—Not Guilty, F. McLeod—Not Guilty, J. McQueen—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo—Guilty, [49] Max Ripstein—Not Guilty,——Not Guilty, E. Sargent—Not Guilty, R. C. Shields—Not Guilty, F. W. Taylor—Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman.

[Endorsed]: Filed at 9 o'clock P. M. April 3d, 1925. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [50]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD, et al.
Defendants.

MOTION FOR NEW TRIAL (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn, in the above-entitled action, and jointly and severally move the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.

2. That the said verdict is against the evidence.

3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against these moving defendants, or either of them.

6. That the Court erred in denying the motion

of these defendants, and each of them, to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendants, property, [51] information and writing seized from the Steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th amendments to the Constitution of the United States, and upon the further ground that its use as evidence against these defendants, and each of them, over their objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence testimony as to the speed of the "C-55," and to which ruling defendants duly excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of these moving defendants, and each of them.

9. That said Court had no jurisdiction of the persons of these defendants, or either of them.

10. That the Court erred in denying the motion of defendants to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendants, George Ford, George Harris & J. Evelyn.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [52]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION FOR NEW TRIAL (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.

6. That said Court had no jurisdiction of the subject matter of the said offense.

7. That the Court erred in overruling the demurrer of defendant to the indictment, and to which ruling defendant duly excepted.

8. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information [53] and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant, over his objection, would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution an defendants *and* closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in admitting in evidence

certain bank notes and currency bills, over the objection of defendant.

12. That the Court erred in admitting evidence of claimed transactions of defendant and other witnesses with ships other than the "Quadra."

13. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this —— day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [54]

In the Southern Division of the United States District Court in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION FOR NEW TRIAL (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.

2. That the said verdict is against the evidence.

3. That the said verdict is not supported by the evidence.

4. That the Court misdirected the jury in matters of law.

5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.

6. That the Court erred in denying the motion of this defendant to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and [55] upon the further ground that its use as evidence against this defendant over his objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the

Court erred in admitting in evidence, and over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of this moving defendant.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants *and* closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

12. That the Court erred in admitting in evidence certain currency and bills over the objection of defendant.

13. That the Court erred in admitting in evidence transactions of defendant and other witnesses with ships other than the "Quadra."

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[Endorsed]: Due service and receipt of a copy of the within motion for new trial is hereby admitted this —— day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [56]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn and move to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of these defendants or of the offense claimed against them.

2. That the Court has no jurisdiction of the persons of these moving defendants, or either of them.

3. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against these moving defendants, or either of them.

4. That the indictment in said action does not show, nor attempt to show, what offense these moving defendants, or either of them, are claimed to

have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

5. That the Court is without power, under the [57] treaty of May, 1924, between the United States and Great Britain, to impose sentence or judgment upon these moving defendants.

6. That the Court is without power to punish the acts and conduct of these moving defendants, or either of them.

7. That all acts, transactions, and conduct of these moving defendants occurred beyond the territorial jurisdiction of the United States.

8. That Sec. 37 of the Criminal Code has no application beyond the territorial limits of the United States.

9. That the Tariff Act of 1922 and the National Prohibition have not, nor has either of them, application beyond the territorial limits of the United States.

10. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

11. No overt act set forth in the indictment was proven.

12. No overt act was shown to have been committed pursuant to alleged conspiracy.

13. No conspiracy was shown.

WHEREFORE, defendants, and each of them, pray that judgment be arrested.

Dated this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendants, George Ford, George Harris, and J. Evelyn. [58]

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [59]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the Treaty of May, 1924, between the United States and Great Britain, to impose any punishment upon this moving defendant. [60]

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated this 3d day of April, 1925.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [61]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the

subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty between the United States and Great Britain, to impose any punishment upon this moving defendant.

5. That the Court is without power to punish the [62] acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated this 3d day of April, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant, Charles Horace Belanger.

[Endorsed]: Due service and receipt of a copy of the within motion in arrest of judgment is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [63]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday, the 3d day of April, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable JOHN S. PARTRIDGE.

No. 15,914.

UNITED STATES OF AMERICA
vs.
GEO. FORD et al.

MINUTES OF COURT—APRIL 3, 1925—SENTENCE.

This case came on regularly this day for pronouncing of judgment as to defendants Marino

Crivello and Salvatore Crivello, whereupon the Court ordered said matter continued to April 4, 1925.

The defendants on trial each being present in person and with their respective attorneys, the Government's attorneys, and the jury being present, trial was resumed.

Case was argued by Mr. Coghlan and Mr. Gillis.

Thereupon Court instructed jury and, as part thereof, instructed jury to return verdict of Not Guilty as to the defendant Max Ripstein. Said jury, after being so instructed, retired at 3:55 P. M. to deliberate upon a verdict and subsequently returned into court at 4:35 P. M. for further instructions and again retired at 4:40 P. M. and again returned at 6:10 P. M. for further instructions, again retired at 6:30 P. M. and returned into court at 8:45 P. M. for further instructions, again retired at 8:47 P. M. and returned at 9 P. M. Roll was called and all twelve (12) jurors answered to their names and were found to be present, and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict, which the Court [64] ordered filed and recorded upon the minutes of this court and which verdict is as follows:

"We, the Jury, find as to the defendants at the bar as follows: Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo.

Harris—Guilty, W. Hastie—Not Guilty, B. James —Not Guilty, J. H. Mason—Guilty, J. McCluskie— Not Guilty, E. McKenzie—Guilty, Thos. J. McClelland—Not Guilty, F. McLeod—Not Guilty, J. McQueen,—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo— Guilty, Max Ripstein—Not Guilty, E. Sargent— Not Guilty, R. C. Shiels—Not Guilty, F. W. Taylor —Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman."

ORDERED that jurors be excused until April 7, 1925, at 10 A. M.

Ordered that R. Bruce, A. Cavanaugh, R. Gardiner, R. Gisborne, C. Grant, W. Hastie, B. James, J. McCluskie, Thos. J. McClelland, F. McLeod, J. McQueen, H. McVey, J. Y. Phillips, Max Ripstein, E. Sargent, R. C. Shiels, F. W. Taylor, F. H. Thibodeau and G. Winterburn be discharged from custody and that they go hence without day, and that their bonds be and the same are hereby exonerated.

Defendants Jack Allen, Charles Horace Belanger, J. Evelyn, George Ford, Geo. Harris, J. H. Mason, E. McKenzie, Carl Neilsen, Emelio Pensotti, Vincent Quartararo were called for judgment. The attorneys for the respective defendants then made motions for new trial and motions in arrest of judgment as to each of said defendants. After [65] hearing counsel for both parties, ordered

that said motions be and the same are hereby denied. No cause now appearing why judgment should not now be pronounced, ordered that defendant Jack Allen be imprisoned for the period of eight (8) months in the county jail, county of San Francisco, California; that defendant Charles Horace Belanger be imprisoned for the period of two (2) years in the U. S. Penitentiary at Leavenworth, Kansas, and pay a fine in sum of $10,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law; that defendant J. Evelyn be imprisoned for the period of ten (10) months in the county jail, county of San Francisco, State of California; that defendant George Ford be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of $1,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law; that defendant George Harris be imprisoned for period of thirteen (13) months in United *in United* States Penitentiary at Leavenworth, Kansas; that defendant J. H. Mason pay fine in sum of $500.00, or, in default thereof, defendant be imprisoned in the county jail, county of San Francisco, State of California, until said fine is paid or he be otherwise discharged by due process of law. Ordered that defendant J. H. Mason have 1 day stay of execution. Ordered that defendant E. McKenzie be imprisoned for period of eight (8) months in the county jail, county of

Marin, State of California; that defendant Carl Neilsen be imprisoned for period of eight (8) months in the county jail, county of San Francisco, State of California; that defendant Emilio Pensotti be imprisoned for the period of [66] eight (8) months in the county jail, county of Marin, State of California; that defendant Vincent Quartararo be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and that he pay a fine in the sum of $10,000.00, or, in default thereof, defendant be further imprisoned until fine is paid or he be otherwise discharged by due process of law.

Further ordered that the clerk issue commitments and that all defendants (except J. H. Mason) be taken into custody.

Entered page 280, Vol. 65, Book of Minutes. [67]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

Convicted of violating Section 37, C. C. U. S.

THE UNITED STATES OF AMERICA

vs.

JACK ALLEN et al.

JUDGMENT ON VERDICT OF GUILTY.

Kenneth C. Gillis, Esq., Special Assistant United States Attorney and the defendants with their

counsel came into court. The defendants were duly informed by the Court of the nature of the indictment filed on the 20th day of November, 1924, charging them with the crime of violating Section 37, C. C. U. S, of their arraignment and plea of not guilty; of their trial and the verdict of the jury on the 3d day of April, 1925, to wit:

"We, the jury find as to the defendants at the bar as follows:

Jack Allen—Guilty, Charles Horace Belanger—Guilty, R. Bruce—Not Guilty, A. Cavanaugh—Not Guilty, J. Evelyn—Guilty, George Ford—Guilty, R. Gardiner—Not Guilty, R. Gisborne—Not Guilty, C. Grant—Not Guilty, Geo. Harris—Guilty, W. Hastie—Not Guilty, [68] B. James—Not Guilty, J. H. Mason—Guilty, J. McCluskie—Not Guilty, E. McKenzie—Guilty, Thos. J. McClelland—Not Guilty, F. McLeod—Not Guilty, J. McQueen—Not Guilty, H. McVey—Not Guilty, Carl Neilsen—Guilty, Emelio Pensotti—Guilty, J. Y. Phillips—Not Guilty, Vincent Quartararo—Guilty, Max Ripstein—Not Guilty, E. Sargent—Not Guilty, R. C. Shiels—Not Guilty, F. W. Taylor—Not Guilty, F. H. Thibodeau—Not Guilty, G. Winterburn—Not Guilty.

THOS. N. NORRIS,
Foreman.

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in

arrest of judgment; thereupon the Court rendered its judgment; THAT WHEREAS, the said Jack Allen, Chas. H. Belanger, J. Evelyn, George Ford, Geo. Harris, J. H. Mason, E. McKenzie, Carl Neilsen, Emelio Pennsotti, and Vincent Quartararo having been duly convicted in this court of the crime of violating Section 37, C. C. U. S. [69]

IT IS THEREFORE, ORDERED AND ADJUDGED that the said

JACK ALLEN,

be imprisoned for the period of eight (8) months in the County Jail, County of San Francisco, California.

CHARLES H. BELANGER,

be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of Ten Thousand ($10,000.00) Dollars; further ordered that in default of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

J. EVELYN,

be imprisoned for the period of Ten (10) months in the county jail, county of San Francisco, California.

GEORGE FORD,

be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas, and pay a fine in the sum of One Thousand ($1,000.00) Dollars; further ordered that in default of the payment of said fine that said defend-

ant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

GEO. HARRIS,
be imprisoned for the period of Thirteen (13) months in the United States Penitentiary at Leavenworth, Kansas.

J. H. MASON,
pay a fine in the sum of Five Hundred ($500.00) Dollars; further ordered that in default of the payment of said fine that said defendant be imprisoned in the county jail, county of San Francisco, California, until said fine be paid or until he be otherwise discharged in due course of law. [70]

E. McKENZIE,
be imprisoned for the period of eight(8) months in the county jail, county of Marin County, California.

CARL NEILSEN,
be imprisoned for the period of eight (8) months in the county jail, county of San Francisco, California.

EMELIO PENSOTTI,
be imprisoned for the period of eight (8) months in the county jail, county of Marin, California.

VINCENT QUARTARARO,
be imprisoned for the period of two (2) years in the United States Penitentiary at Leavenworth, Kansas; and pay a fine in the sum of Ten Thousand ($10.000.00) Dollars, further ordered that in de-

fault of the payment of said fine that said defendant be further imprisoned until said fine be paid or until he be otherwise discharged in due course of law.

Judgment entered this 3d day of April, 1925.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 18, Judg. and Decrees at, page 357. [71]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

BILL OF EXCEPTIONS OF DEFENDANTS GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER AND VINCENT QUARTARARO.

The above-entitled cause came on for trial on Tuesday, March 10, 1925, at 10 o'clock A. M. of

said day in the city and county of San Francisco, State of California, before the above-entitled court, Hon. John S. Partridge, Judge thereof, presiding therein; and, a jury having been empaneled and sworn to try the case, thereafter continuing from day to day until the conclusion of said trial, the following proceedings among others were had, testimony and evidence, oral and documentary, was introduced on behalf of the United States and on behalf of the defendants as follows:

Mr. FAULKNER.—On behalf of the members of the crew and the officers of the "Quadra" who are named in indictment 15,914, as the first 23 defendants therein named, and who are named in each succeeding indictment on the calendar this morning, before the jury is empaneled and on behalf of these defendants collectively and individually we object to the jurisdiction of the Court as to the [72] persons of these defendants so that the record will distinctly show that their appearance at this time is not a waiver of protest of jurisdiction. That goes to all the defendants, I take it, without naming them, your Honor?

The COURT.—Yes, and the objection is overruled.

Mr. GREEN.—We note an exception.

The COURT.—Call the jury.

(Rep. Tr., p. 6.)

The COURT.—Make your statement, Mr. Gillis.

Mr. GILLIS.—May it please the Court and Gentlemen of the venire:

The case that is presented to you this morning

involves what is commonly known as the "Quadra" case, and is a conspiracy indictment returned by the Grand Jury in this district against some 60 odd defendants. There are present before you in this indictment 23 members which constitute the officers and members of the crew of the ship "Quadra", which is a ship of British Registry, coming from Vancouver to San Francisco; and, as set out in the indictment, she was seized by the coast guard officers shortly or a little way beyond the Farallone Islands on October 12 of last year, the ship being loaded completely with liquor; in addition to these men there are two men who were seized the night preceding that, on October 11, 1924, in one of the small motor-boats out in San Francisco Bay as having made contact with the "Quadra."

In addition to that there are two men who were seized upon a small motor-boat at the time the "Quadra" was seized, which was joined onto the "Quadra" taking cargo at that particular time.

In addition to these men there are two men who are directors of the Consolidated Exportation Limited Company, the company which owned the cargo of the "Quadra"; and in addition one other man by the name of Quartararo who was apprehended in San Francisco [73] as the representative of this company here.

The indictment is a conspiracy indictment alleging that these individuals formed a conspiracy for the purpose of violating the laws of the United States, namely, the Tariff Law which prohibits the

importation of certain goods into the United States, and also the National Prohibition Act which prohibits the transportation or importation of liquor into this country.

I think, Gentlemen, that that in brief sets out to you the matters sufficiently so that you may have an understanding as to the general charge that is made against these particular defendants who are on trial here this morning.

The COURT.—Can you give the names of the attorneys for the defendants? You had better state the names of all of the attorneys.

Mr. GILLIS.—I don't think I know as to their specific representations. Perhaps the attorneys had better make a record of that themselves.

Mr. O'CONNOR.—I appear for the defendants McKenzie and Pensotti. Frank J. Hennessy appears for the defendants Allen and Neilsen. Nathan Coghlan appears for the defendant Vincent Quartararo. Louis Crowley and Isaac Pacht appear for the defendant Ripstein. Mr. Green and Mr. Faulkner appear for the officers and members of the crew of the "Quadra" and for Charles Horace Belanger. I think that covers the appearances.

(Rep. Tr., pp. 7-9.)

Mr. COGHLAN.—At this time, if the Court please, with great deference to the rule of the Court, the defendant Quartararo requests the privilege of personally interrogating each juror. We predicate this general demand upon the fact that of course a defendant at this bar is entitled to a

jury of his own selection; we believe [74] that there is a constitutional right involved in that.

The COURT.—Mr. Coghlan, no lesser person than the Chief Justice of the United States, and the Committee of which he is the head, examined that subject and it seems to me their ruling upon it is sufficient.

Mr. COGHLAN.—I have a great deal of respect also for that authority but the request is denied, is it?

The COURT.—Yes, the motion is denied.

Mr. COGHLAN.—We note an exception.

Mr. FAULKNER.—The same request on behalf of the members of the crew and the captain and Mr. Bellanger and all of the defendants?

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 14-15.)

The following proceedings occurred concerning the examination of jurors, to which exception was taken:

Question (By the COURT). Any member of your immediate family belong to any civic or religious body or organization having among its principles the enforcement or repeal of the United States Prohibition Act?

Mr. DICK (a Juror).—My wife belongs to the W. C. T. U.

The COURT.—Is there anything in that fact that would in anywise prevent you from being a fair juror in this case?

Mr. DICK.—No.

Mr. MORSE (a Juror).—My wife does likewise.

The COURT.—Is there anything in that fact that would in anywise prevent you from being a fair juror in this case?

Mr. MORSE.—No, sir.

(Rep. Tr., p. 16.)

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that it would require less evidence to satisfy his mind of the [75] guilt of the defendants in a prohibition case than it would in any other kind of a criminal case.

The COURT.—Mr. Morse, would it require any less evidence to convince your mind in a case where the prohibition law was involved than in any other kind of a criminal proceeding?

Mr. MORSE.—I think not.

The COURT.—You understand, do you not,—all of you gentlemen—that the Government must establish the guilt of these defendants to a moral certainty and beyond a reasonable doubt, and if you are so instructed you will all require that kind of evidence, will you?

Any other questions?

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that he would give more credence to the testimony of officers for the Government than he would to defendants charged with the violation of the National Prohibition Act, or a conspiracy to violate that law, all other things being equal.

The COURT.—Yes, other things being equal.

Mr. MORSE.—Not intentionally.

Mr. GREEN.—Would he do it unintentionally?

Mr. MORSE.—That is a question that I could not answer.

The COURT.—Of course, Mr. Green, that involves a psychological fallacy, if you know what that is. No man could say what he would do unintentionally.

Mr. GREEN.—I understand that Mr. Morse said that he had decided views on the subject of prohibition; then might I ask what those decided views are?

The COURT.—I don't think he said so. Did you, Mr. Morse?

Mr. MORSE.—I said I had very pronounced views.

The COURT.—Well, which is it, for or against?

Mr. MORSE.—For. [76]

The COURT.—In spite of that, is your state of mind such that where a man or men are charged with a conspiracy to violate that law and other laws that you could give them a perfectly fair trial and require the Government to establish their guilt to a moral certainty and beyond a reasonable doubt before you would convict them?

Mr. MORSE.—I believe I could.

Mr. GREEN.—If the Court please, I interpose a challenge for cause. I do not think that a man who has pronounced views—very pronounced views, as the talisman says, on the subject of prohibition enforcement, in favor of prohibition enforcement, can give the defendants a fair and impartial trial.

The COURT.—The challenge is denied. It is the Government's challenge.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti I have some questions to propound.

The COURT.—All right, what are they?

Mr. FAULKNER.—May the record show an exception on behalf of the defendants to your Honor's order denying the challenge?

The record further shows that all peremptory challenges of the defendants were exhausted before the jury was sworn and empanneled.

(Rep. Tr., pp. 16–18.)

Mr. FAULKNER.—If your Honor please, before the introduction of any evidence on behalf of the prosecution, we desire to renew our motion concerning the jurisdiction of the persons and jurisdiction of the subject matter, and particularly point out to the Court that the statutes which these men are accused of violating have been repealed by the treaty between Great Britain and the United States, and thereby depriving the court of jurisdiction of the subject matter.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

The COURT.—Go ahead. [77]

OPENING STATEMENT FOR THE GOVERNMENT.

Mr. GILLIS.—May it please the Court, and Gentlemen of the Jury: You heard me state briefly my opening address to the general venire

the general nature of this case. I will take up briefly now, and only briefly, the evidence that we expect to produce here, by witnesses from the witness-stand, to establish the case on behalf of the Government.

You will hear certain names mentioned as we go through the trial of this case, and perhaps, at the very outset, I had better call your attention to some of these names, in order that you may have a clear understanding of who are before you at the present time.

The first three names in the indictment, Mr. George Ford, as the evidence will show, is the captain of the ship "Quadra" that the evidence will show was seized by the Government; Mr. George Harris is the first officer, and Mr. Evelyn is the second officer of the "Quadra."

Then there some 20 odd defendants who constitute the remaining members of the crew of that ship, the "Quadra."

Then we come to two names, Jack Allen and Carl Neilsen. These two men, the evidence will show, were apprehended on the "903–B," a small motor-boat, the night previous to the seizure of the "Quadra," and, as the evidence will show, was making contact with the "Quadra."

The two names following them are Mr. Penzotti and Mr. McKenzie. Those two men were in charge of and aboard of the boat "C–55," that was apprehended by the coast guard at the same time the "Quadra" was apprehended; she was alongside of the "Quadra."

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We then come down to two names, Mr. Belanger and Mr. Ripstein. These two men were directors of the Consolidated Exporters, Limited, of Vancouver; and the remaining defendant, Mr. Quartararo, who was one of the agents in San Francisco, and handled the liquor as it was landed from the boat here in this city. There are 16 names in [78] the indictment—the remaining individuals have not been apprehended—the most of them, as the evidence will show, constitute officers and directors of the Consolidated Exporters Limited, of Vancouver.

Now, the particular charge, Gentlemen, that is made against these individuals is not a charge of a direct violation of the prohibition law, or of the Tariff Act, but is a charge of conspiracy, and the evidence that the Government will present will show you that there was a combination of individuals who are on trial here before you, and that as a part of that combination, in September of 1924, the ship "Quadra," owned by the Canadian Mexican Shipping Company, Ltd., of Vancouver, was loaded with a full cargo of liquor; that she contained no other cargo at all; and the cargo was owned, as the evidence will show, by the Consolidated Exporters Limited, of Vancouver; that in September, the "Quadra" sailed from Vancouver, and, coming south, she took up a position opposite the Golden Gate, and sailed up and down in front of the Gate, and at some distance from the Farallones, for many days; during that time she had unloaded 1,000, 2,000, or 3,000 cases of liquor that

was taken over her side while she was sailing back and forth just outside of the Golden Gate. Then on October 12, 1924, the coast guard cutter "Shawnee," in command of Captain Howell, observed the "Quadra" within a very short distance of the North Farallone Islands, which is a United States possession; that he immediately overhauled the "Quadra," caused her to stop, and, at the same time, forced the "C–55," which was alongside of the "Quadra," and which, when the "Shawnee" approached started out toward the sea, to come back; that when the "C–55" did come back to the "Shawnee" and tie up alongside of her, they found her loaded with liquor; that the "Quadra" was thereupon seized and brought into port, and her cargo stored in the warehouse here by the Government Customs Officers; that there was something [79] like 9,000 cases of liquor still aboard the "Quadra" at that time.

As I have told you, the night before there was one other boat, the "903–B," in charge of two of the defendants here, that was picked up right in the bay of San Francisco by one of the small coast guard patrol boats. The evidence will show that the "903–B," as well as the "C–55," the "Marconi," which is another boat, a Californian, and several other small motor-boats registered in this city, made contact with the "Quadra" and took liquor from her and brought it into the port of San Francisco; and we will show you, as a part of that system, that the idividuals in San Francisco who were a part of this conspiracy, many of

whom have not been apprehended, many of whom whose names we do not know, used a system of $1 bills to secure their cargo; that these bills were clipped in half, one-half being delivered to the captain or supercargo of the "Quadra," and the other half going out in the small motor-boat that went to secure the particular load of cargo called for, these $1 bills having upon their back the list and order for the specific amount, and the kind of liquor that was to be secured from the "Quadra," that when they got out there the bills were matched up, and when they were matched up the cargo was delivered to the particular motor-boat, and then they brought their cargo right in to San Francisco.

I think, Gentlemen, that constitutes the case that the Government is to present, and that it will develop from the evidence that is presented from the witness-stand.

(Rep. Tr., pp. 36–39.)

It was stipulated between counsel for the Government and counsel for the defendants, at the suggestion of and order by the Court, that objections made and exceptions taken during the course of the trial would be deemed to be objections on behalf of all defendants jointly and severally, and that exceptions would be deemed [80] exceptions on behalf of all defendants jointly and severally, all objections made and exceptions taken to inure to the joint and several benefit of each defendant.

TESTIMONY OF C. F. HOWELL, FOR THE UNITED STATES.

C. F. HOWELL, called as a witness on behalf of the United States, having been first duly sworn, testified as follows:

Direct Examination by Mr. GILLIS.

I am a Lieutenant Commander in the United States Coast Guard, in command of the cutter "Shawnee," and have been a member of the coast guard for nearly 26 years and hold an unlimited master's license.

I was in command of the cutter "Shawnee" on October 12, 1924. On the morning of October 12 I was near the Cordell Banks, which is about 45 miles out in the ocean with reference to Fort Point. When in that neighborhood I saw a vessel, which afterwards proved to be the "Quadra." At the time I first saw the "Quadra" I was in a position about 11 miles from the position in which we captured the "Quadra," and between that position and the south end of the Cordell Banks.

When first sighted there was no way of telling whether or not the "Quadra" was in motion, but I was hove to at that time, not in motion myself, and after a lapse of a material time I noted the "Quadra" on the same approximate bearing as that in which I originally sighted her, which indicated that she was hove to. I then steamed down to investigate, making my course take me toward the "Quadra." As I approached the "Quadra" it

(Testimony of C. F. Howell.)

came fuller into view and I saw her in motion. I was about 4 or 5 miles, approximately, away when I noticed she was in motion. She was headed in shore toward the beach, and we noted her in motion, when he got under way, turned, [81] and headed offshore. As he steamed offshore I hauled my course to the westward in order to head him off. I shifted my course two or three times in order to make the courses converge, but continued in the direction of the "Quadra." While I was in motion towards the "Quadra" I gave a signal to it. When I figured we were close enough for the "Quadra" to hear I blew four whistles, which is a customs signals that you want to *speak* a vessel. She responded to that signal by stopping immediately. I then ranged the "Shawnee" down toward her. When about 150 yards or so distant I stopped my engines.

When I got down reasonably close to her I was approaching from the starboard side and as I drew near I slowed down and went under her stern and rounded to on her port quarter. The "Quadra" was headed offshore to the westward at that time. As I rounded the port side of the "Quadra" I saw the motor-boat "C–55," which is about 45 or 50 feet long and run by a gas-engine. She was steaming from the side of the "Quadra," headed offshore, at a distance from the "Quadra" of about 200 yards. I gave a signal to the small boat of four blasts on the whistle, to which it did not respond.

(Testimony of C. F. Howell.)

I then fired a shot across his bow, and the small boat responded to it by rounding to, and it came alongside of the "Shawnee." I remember the crew of the "C–55" were a man named Pensotti and a man named McKenzie, who, I believe, are defendants in this action. I looked on board the "C–55."

Q. What did you see on board the "C–55"?

Mr. FAULKNER.—We object to the question on the ground it is an effort on the part of the prosecution to prove an overt act prior to the establishment of the conspiracy; that is an objection which goes to the benefit of all officers and members of the crew, and is supplemented by an objection on behalf of Mr. Belanger to the effect that it is not binding upon him, hearsay, and the proper foundation has not been laid. [82]

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. A number of sacks, filled, with the word "Corby" painted on them and a partly filled case of bottles.

(Rep. Tr., pp. 44, 45.)

Mr. GILLIS.—Q. Did you see the bottles?

A. Yes.

Q. Did you see what kind of bottles they were?

Mr. FAULKNER.—We desire, then, to object to it on the grounds heretofore stated in behalf of the officers and members of the crew, and Mr. Belanger, as to the question propounded by the District Attorney.

The COURT.—Overruled.

(Testimony of C. F. Howell.)

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 45, 46.)

A. They were, I would say, beer bottles in appearance. I could not tell whether they had anything in them.

I sent a party aboard to search the "C-55" and take the crew off her and send them aboard the "Shawnee" and substitute our own men for the people who were previously manning her, and made her fast alongside of the "Shawnee." At that time I was about 100 yards from the "Quadra" on the port side.

I had a conversation with the captain of the "Quadra" at that time. I did not know who the captain was then, but know now that it is George Ford.

Q. What was the conversation that you had at first with the captain?

Mr. HENNESSY.—We object to that on behalf of the defendants Allen and Neilsen. It is hearsay, not in their presence, immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection as to Belanger. I make the same objection, supplemented by the further objection that the [83] proper foundation has not been laid as to the defendant Belanger.

The COURT.—Do you mean the foundation as to whether it was voluntary or not?

(Testimony of C. F. Howell.)

Mr. FAULKNER.—As to whether a conspiracy has been shown, the ability of Captain Ford to bind Mr. Belanger, and the additional grounds that have been stated by Mr. Hennessy.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr. pp. 47, 48.)

Mr. COGHLAN.—On behalf of the defendant Quartararo, and I imagine on behalf of several other of the defendants, the proper foundation will not then have been laid, because the *corpus delicti* must be proved; you cannot prove a conspiracy by the mere conversation or admissions.

The COURT.—Not at all.

Mr. GILLIS.—I do not expect to.

The COURT.— But, of course, that, again, Mr. Coghlan, is a question of the order of proof, and it is impossible for these cases to be tried at all if you are going to do that.

Mr. COGHLAN.—I understand that, but only in order to preserve the proper exception leading up to the time when your Honor might entertain a motion to strike out the conversation—

The COURT.—You may have your exception.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti, I object to any conversation on the ground it is an attempt on the part of the Government to establish a conspiracy by the statements and declarations of a defendant.

Mr. GILLIS.—I will withdraw that question.

(Rep. Tr., p. 50.)

Mr. GILLIS.—Q. Captain, now, before having

(Testimony of C. F. Howell.)

any conversation with reference to the "Quadra," or her cargo, or anything that pertained [84] to that, or pertained to your position aboard the "Shawnee," or that pertained to the crew in any manner, or any defendant in this case, did you make any promises to Captain Ford, or did you make any threats to him, or use any coercion to get him to make a statement to you of any kind, shape or form? A. I did not.

Q. Now, did you have a conversation with Captain Ford at that time? A. I did.

Mr. FAULKNER.—I renew on the objection on behalf of the defendant Belanger that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid as to him, and renew the motion on behalf of Captain Ford and the members of the crew that this is a conversation alleged to have occurred beyond the jurisdiction of the United States.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 50, 51.)

Mr. GREEN.—Might I cross-examine Captain Howell on the question of coercion and threats?

The COURT.—Yes.

Mr. GREEN.—Q. Captain Howell, at this time is it not a fact that you called *Captain Howell's* attention to the fact that you had a gun on the "Shawnee"?

The COURT.—You may answer.

(Testimony of C. F. Howell.)

Mr. GILLIS.—He should ask about the facts, what he did, and what he said.

The COURT.—That is about what the question amounts to, I think, Mr. Gillis.

A. I do not quite understand your question; if you will, please straighten it out—before any conversation occurred, or after.

The COURT.—Before one started.

A. Before one, I did not. [85]

Mr. GREEN.—You did not call his attention to the fact that you had the power to exert force upon him at that time?

A. Not at that time, no.

Q. Not at that time, but later? A. Later.

Q. Later you did? A. Yes.

Q. During the conversation?

A. Not at any time at the beginning of the conversation.

Q. Not at any time at the beginning, but during the course of the conversation you did that very thing, did you not, called Captain Ford's attention to the fact that you had a gun on the "Shawnee," and that you would use force if necessary?

A. I did.

(Rep. Tr., pp. 51, 52.)

A. I informed Captain Ford that he was too far in, and that I would take him to San Francisco. Captain Ford replied that he was fourteen miles off, and I asked him "Off what"? He replied, "Off Point Reyes." I said, "You have probably forgotten the Farallones," to which he made no

(Testimony of C. F. Howell.)

particular rejoinder. He said, "I am on the high seas, will you send over and examine my papers?" I said, "I will." He said, "I have done nothing illegal."

(Rep. Tr., p. 52.)

This was before I boarded. I was still on the "Shawnee." I said, "You folks probably consider this a sporting proposition, so you should be sports enough when you are caught to come in." He replied, "I am a good sport, and wish I could say as much for you. My word is just as good as yours." I replied, "Your word is just as good as mine when you get into court, but out here it is not." There I had to stop, because that is when I told him I had a gun aboard.

The COURT.—Now, Mr. Gillis, I did not mean to rule that he could not give the rest of the conversation, so you may ask him, so that counsel can raise the point. [86]

Mr. GILLIS.—Q. Now, Captain Howell, from that point on you had additional conversation with Captain Ford, did you? A. Yes.

Q. At that time? A. Yes.

Q. And what was that conversation?

Mr. GREEN.—Objected to on the ground that no proper foundation has been laid.

The COURT.—Do you wish to ask any other questions on the question of foundation?

Mr. GREEN.—Q. It is a fact, Captain, that at this time you called Captain Ford's attention to

(Testimony of C. F. Howell.)

the fact that you had a gun on the "Shawnee," and that you would use force if necessary? A. Yes.

The COURT.—Q. Just what did you say, Captain?

A. Captain Ford said he had competent navigators in the "Quadra," and his word was just as good as mine. I replied, "When you get into court your word is just as good as mine, but out here it is not, because I have a gun, and I will use it if it is necessary to take you in."

Q. What did he say to that?

A. He said he would not steam in. I was asking him if he would steam in. He said he would not steam in, "You will have to put a prize crew aboard"; and I said, "Very well," and put it aboard.

Q. Then this subsequent converation you had was after you were aboard; is that the idea?

A. No.

Q. You have narrated all the conversation you had then, have you?

A. He asked me to send over and examine his papers, and the conversation I was about to mention was with reference to his refusal to steam in. That was in answer to Mr. Gillis' question.

The COURT.—The objection is overruled.

Mr. HENNESSY.—I desire to make an objection to the conversation on behalf of Allen and Neilsen, on the ground that it calls for hearsay testimony, immaterial, irrelevant and incompetent, and no [87] proper foundation laid.

(Testimony of C. F. Howell.)

The COURT.—Overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection on behalf of Mr. Belanger.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—I make the same objection, and also that it appears that there was a denial of any complicity in the commission of an offense.

The COURT.—Then it does not do you any harm.

Mr. COGHLAN.—And, therefore there is no foundation.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 54, 55.)

Prior to having the latter part of this conversation I sent Ensign Osterman and Boatswain Patterson aboard the "Quadra." It was while they were aboard the "Quadra" that I had further conversation with Captain Ford with reference to steaming in.

Q. (By Mr. GILLIS.) Relate that conversation now.

Mr. COGHLAN.—We object to that on behalf of the defendant Quartararo on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—The same objection as to the defendant Belanger.

(Testimony of C. F. Howell.)

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. Mr. Osterman and Mr. Patterson were sent over to examine the papers of the "Quadra" and in response to a suggestion from Captain Ford when these gentlemen reached the "Quadra"—

Mr. GILLIS.—No conversation between them that you did not [88] hear.

A. The conversation was addressed to me; they hailed me and said Captain Ford refused to show any papers or give any information until he had conferred with counsel.

(Rep. Tr., pp. 55, 56.)

The COURT.—If you, Gentlemen, could get together and agree on some one of yourselves to make the objections, we would save lots of paper and a lot of time.

Mr. CROWLEY.—I made that suggestion a few moments ago, if it might be handled that way, with all due respect to your Honor, that if an objection is made, that that objection may be deemed to be made on behalf of all of the defendants, unless otherwise stated.

The COURT.—Well, all right, that will do.

Mr. CROWLEY.—I would like to have that understanding and stipulation.

Mr. FAULKNER.—Would not this be a solution of it: It is quite apparent that everything that occurred between Captain Howell and the steamer "Quadra" was outside of the presence of the defendants Ripstein, Belanger, Quartararo,

(Testimony of C. F. Howell.)

Allen and Neilsen. Now, then, may it be stipulated that all evidence that goes in as to the situation between Captain Howell and the "Quadra" be deemed objected to for every reason as to those defendants, that the Court has overruled it, and that we have noted an exception?

The COURT.—All right; let that stipulation be entered of record.

(Rep. Tr., p. 57.)

The COURT.—The Captain had stated that his two officers hailed him and told him that the captain of the "Quadra" declined to allow him to see the papers until he had consulted counsel. That is as far as he had got.

Mr. GILLIS.—Q. Now continue with the conversation, Captain. [89]

A. I directed them to take charge of the "Quadra." I renewed my request on Captain Ford to steam in. Upon his refusal I told him I would put a line aboard and tow him in, and I did.

That was the full conversation with him at that time. I put a line aboard by means of a dory that had taken Osterman and Patterson aboard, got the end of the line aboard the "Quadra" and sent two men who were in the dory to help get the line, as the "Quadra's" crew refused to do anything. So the two officers and the two enlisted men made the line fast. After the line was fast we got under way and came and brought the "Quadra" to San

(Testimony of C. F. Howell.)

Francisco and her cargo as it was. The ship and cargo were turned over to the customs officials.

I recognize the chart you ask me to examine. It is the chart we were using October 12 when we seized the "Quadra." It is the chart of the "Shawnee" and belongs to it, and was used by myself on the "Shawnee" on October 12 and is the only one used.

Mr. GILLIS.—I ask that the chart be introduced in evidence and marked Government's Exhibit No. 1.

When we arrived on the port side of the "Quadra" we took bearings and knew what position we were in with reference to the North Farallones and Point Reyes. The bearings were taken at that time by one of the ship's officers, Ensign Morse, and myself. Ensign Morse reported the bearings to me and I checked them. I checked them in this way: He used a pelorus in taking the bearings and I checked them by compass. He was on top of the wheel-house, and I was down on the lower bridge.

Q. What was the result of those bearings?

Mr. CROWLEY.—The same objection that we have heretofore made, and by that I mean that lengthy objection I stated in the record.

The COURT.—Objection overruled. [90]

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection and exception.

(Testimony of C. F. Howell.)

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

Overruled. Exception taken.

A. The bearing places the vessel 5.7 miles from the most northern of the North Farallone Islands.

Mr. GILLIS.—What was the bearing off Point Reyes?

Mr. COGHLAN.—Same objection on behalf of the defendant Quartararo.

Overruled. Exception taken.

A. The bearing off Point Reyes was 40 degrees true.

Mr. GILLIS.—What was the bearing off the North Farallones?

Mr. CROWLEY.—The same objection.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

A. 113 degrees true.

(Rep. Tr., pp. 60, 61.)

I did something else at that time with reference to determining the position the "Quadra" and the "Shawnee" were in at the time we were on the port side of the "Quadra." I took soundings. I will explain how the sounding machine operates.

A sounding machine consists of a reel of fine piano wire on the end of which a heavy weight is made fast; the line leans over a sheave over the stern of the vessel to keep it clear; attached to the weight is a tube; the gear used in connection with the sounding machine consists of a brass tube closed at one end. The tubes that we use are

(Testimony of C. F. Howell.)

ground glass on the inside so that when they are wet they are transparent. The end is closed by a rubber cap. The glass tube is placed for protection in a brass tube with the open end down; by releasing the brake on the reel the weight carries to the bottom. [91] As the wire is paying out a slight strain is kept on it with a brass hook by this means it can readily be established when the weight hits the bottom. This fact also becomes apparent because of the fact that the line slacks up. The brake is set on the reel, and the dial attached to the reel is red, and the wire is then reeled in. The revolutions of the dial and the fathoms are the same up to 80 fathoms; when the weight is brought up, the tube is taken out and placed in a scale properly graduated and with the tube end still up, to prevent water from running down in the tube. The depth of water is indicated by the line of demarcation between transparency and translucency, and is read directly from the scale.

(Rep. Tr., pp. 61, 62.)

The dial you read from is on the side of the reel that goes out. It shows the number of revolutions that the reel has made. On the back of the machine there is a legend giving the corrections for certain depths. The first correction to be applied is at 80 fathoms.

When the location of the "Quadra" testified to, alongside on the port side of the "Quadra," I caused the sounding to be made with this machine

(Testimony of C. F. Howell.)

which was aboard the "Shawnee." I have seen the glass tube in a measure before and recognize it. It is the glass tube and the scale that were used in taking the sounding at that time.

Mr. GILLIS.—We offer this in evidence.

Mr. FAULKNER.—The same objection on behalf of the defendant Belanger.

The COURT.—The objections are all overruled.

Mr. O'CONNOR.—Exception.

(Rep. Tr., pp. 62, 63.)

When the tube was brought up from the water it was delivered to me and I read it.

Q. (By Mr. GILLIS). What did it read at that time?

Mr. CROWLEY.—The same objection as heretofore made. [92]

Mr. FAULKNER.—The same objection on behalf of Belanger.

Mr. O'CONNOR.—The same objection on behalf of McKenzie and Pensotti.

The COURT.—Objection overruled.

Mr. O'CONNOR.—Exception.

A. Forty-four fathoms.

Mr. GILLIS.—Q. What is this tape that is an the scale, Captain?

A. I directed that the tube be immediately sealed in the scale, with the edge of the tape marking the reading, for the reason that after the tube dries out there is no longer the line between transparency and translucency.

(Testimony of C. F. Howell.)

The COURT.—Q. The depth or extent to which the watetr reaches up depends upon the pressure?

A. Yes.

Q. And the pressure depends upon the depth?

A. Yes.

(Rep. Tr., p. 63.)

I did not personally read the dial on the side of the sounding machine. The dial reading was reported to me at approximately the same time that I actually saw the tube. I could not say whether it was just before or just after, but it was approximately the same time.

Q. What was that record?

Mr. CROWLEY.—The same objection, with the additional objection that it must be hearsay so far as my client is concerned.

The COURT.—You saw the dial and the tube both? A. No, sir. I did not see the dial.

Q. Some officer took that? A. Yes.

Q. The pressure tube is a check on the dial, is it?

A. It is just the reverse.

Q. The dial is a check on the pressure tube?

Q. Somebody else took the dial?

A. I was on the bridge. Of course, they could bring the tube to me, but could not bring the dial. [93] I stayed on the bridge.

The COURT.—I think you will have to prove that by somebody else, Mr. Gillis, if there is any question as to the number of fathoms of water.

Mr. GILLIS.—Very well, your Honor.

(Rep. Tr., pp. 63, 64.)

I sent one of my officers to take the cross bear-

(Testimony of C. F. Howell.)

ings and he reported it to have been taken by pelorus. I took the compass bearings myself and the bearings I have given there, that is, my northerly island of the Farallones and the Point Reyes bearings were bearings I took myself.

The COURT.—I think you will have to prove the other bearings by someone else, Mr. Gillis.

Mr. GILLIS.—Yes, your Honor.

(Here follows a detailed description of a pelorus.)

(Three pictures were then shown to the witness. The first, a picture of the pelorus on the "Shawnee" at the time the "Quadra" was seized, was offered in evidence and marked U. S. Exhibit 3.)

A picture of the compass on board the "Shawnee" on October 12, 1924, was also received in evidence.

The COURT.—What has the jury to do with these, Mr. Gillis? The jury is not concerned with the position of the ship.

Mr. GILLIS.—That is very true, your Honor. Perhaps it is only for the Court.

The COURT.—This evidence is for the Court only.

Mr. GILLIS.—That is very true.

The COURT.—The question as to the position of the ship will come up on that ruling. The jury has nothing to do with that.

Mr. GILLIS.—That is very true, your Honor.

(Rep. Tr., 67, 68.) [94]

The next photograph was a picture of the "Shaw-

(Testimony of C. F. Howell.)

nee" as she was on October 12, 1924, and in the same condition, except for the introduction of an aerial for a radio compass that subsequently has been put in, which picture was introduced as Government's exhibit next in order, viz., U. S. Exhibit 5.

Picture 5 represents the top of the wheel-house of the "Shawnee." There is no structure above that other than the spars and funnel.

The witness then pointed on the chart, Exhibit 1, the location of the "Quadra" and the "Shawnee" at the time the "Shawnee" pulled in around on the port side of the "Quadra," the point being right where certain lines cross. The witness testified that "the one in this direction represents the bearing of the lighthouse on Point Reyes, and the one in this direction represents the tangent to the northermost of the North Farallones." The witness drew a large circle showing the intersection. The chart shows at that particular point 44 fathoms.

This chart, Government's Exhibit 1, is a chart used by the Coast & Geodetic Survey Branch of the Government, and is Chart #5502, covering the California Coast from Point Arena to San Francisco. These charts are used by all American and most foreign vessels, and the small numbers marked on the chart represent the depth of the water in fathoms, unless they are in a dotted surface, in which case they are represented in feet.

The depth of water ascertained by our sounding

(Testimony of C. F. Howell.)

machine was the depth of water as shown by that chart at the point marked, and that corresponded with the position as fixed when we took our bearings off Point Reyes and the Farrallones where the two bearings intersected.

On the same day we brought in the "C–55" and she was [95] delivered to the customs authorities.

When McKenzie and Pensotti, who were on the "C–55," came aboard the "Shawnee" I had a conversation with them.

Q. What was that conversation?

Mr. FAULKNER.—The same objection on the ground it is immaterial, irrelevant and incompetent, hearsay as to the other defendants, and the proper foundation has not been laid.

Mr. COGHLAN.—The same objection and exception.

The COURT.—Was this conversation entirely voluntary? Did you make any threats against them at all? A. No.

Q. Did you make them any promises of any kind?

A. No.

Q. Did you attempt in anywise to intimidate them in order to make them talk? A. No.

The COURT.—The objection will be overruled. Of course, gentlemen, so far as the defendants other than those who made the statements are concerned, they will be fully protected by the instructions.

Mr. CROWLEY.—We note an exception.

(Testimony of C. F. Howell.)

A. McKenzie made the remark that the cargo he had in the "C–55" was going to the "Quadra," and not coming from her. He also said that the beer in the "C–55" belonged to him personally and that I had spoiled his appetite for it by firing a shot at him. He claimed the cargo came from the "Coal Harbor."

The COURT.—The "Coal Harbor" is the name of another vessel?

A. The name of another vessel, yes. I asked him why he attempted to escape when I blew to him to stop, and he replied that he thought that I was going to be busy enough with the "Quadra" so he could get away.

Mr. GILLIS.—That is all. You may cross-examine.

(Rep. Tr., p. 71.) [96]

Cross-examination.

(Questions by Mr. O'CONNOR.)

The conversation between myself and the defendants McKenzie and Pensotti took place after they had been brought aboard, about 20 minutes after they had been brought aboard I would say. It was before we started to tow the "Quadra." I do not believe anyone else was present besides Pensotti, McKenzie and myself. No members of the crew were present as far as I remember. The conversation took place on the forward deck, alongside of the anchor engine. In substance the first thing I said to McKenzie and Pensotti was to ask them if they had their lunch and why they did

(Testimony of C. F. Howell.)

not go below and get something to eat. They said they did not want any lunch. As far as I remember the conversation I have just repeated is all that was said.

It is not a fact that I said to the defendants at that time, "Tough luck, fellows," or words to that effect; at least not as far as I remember. I would say that I did not say it.

There was no discussion between defendants McKenzie and Pensotti and me at that time with regard to the position of myself and the steamer "Quadra." The defendant McKenzie at that time did not say that the steamer "Quadra" was far beyond twelve miles from the North Farallones, and the defendant Pensotti did not say the same thing to me in similar words.

I did not at that time say to defendant McKenzie or Pensotti that the steamer "Quadra" was approximately 13½ miles off Point Reyes, but that she was less than 12 miles off the North Farallones.

I did not at that time say to defendant McKenzie or Pensotti that the captain of the "Quadra" evidently forgot the Farallones; that he was judging his distance merely from Point Reyes. I did not at that time indicate to defendant McKenzie or Pensotti the distance the "Quadra" was off the northernmost point of the [97] Farallones.

I did not at any time from the time the defendants McKenzie and Pensotti came aboard the "Shawnee" until they were discharged at San Francisco indicate to them what I thought was

(Testimony of C. F. Howell.)
the distance of the "Quadra" from the north point of the Farallones.

After I had this conversation with McKenzie and Pensotti I did nothing with them. I don't know where they went. They were permitted to go anywhere on the "Shawnee" within reason.

I did not at any time say to the defendants Pensotti and McKenzie that the "Quadra" was five miles off the north point of the North Farallones at the time of seizure.

I did not at any time while they were aboard the "Shawnee" say to McKenzie and Pensotti that the "Quadra" was 9½ miles off the north point of the North Farallones.

I did not at any time while they were aboard the "Shawnee" say that the "Quadra" was 10½ miles off the north point of the Farallones.

In other words, I did not have three distinct conversations with the defendants while they were aboard the "Shawnee" at different times. To my recollection I did not have any conversation with them after the first conversation. I will say I did not have such a conversation. I could be mistaken, but I am testifying that I am not. That is my best recollection. I will now definitely say as a matter of fact that I had no conversation with either of these defendants other than the one I have testified to. I would not say I could not be mistaken about it.

McKenzie did not, while aboard the "Shawnee" on that day after the seizure of the "Quadra,"

(Testimony of C. F. Howell.)

say to me in substance as follows: "I am not much of a navigator, I am a dead reckoner, and the distance between where the 'Quadra' was seized and Point Reyes and the distance between where the 'Quadra' was seized and the north point of the [98] North Farallones is about the same," or words to that effect. Pensotti did not say that, either, and I am positive of that.

It is correct that there was no conversation at all other than the one conversation already testified to with regard to what they were doing as to transporting liquor to the "Quadra and in regard to the beer. That is the only conversation.

(Questions by Mr. GREEN.)

I came alongside of the "Quadra" about 11:50 A. M. My clocks were set at mean time, 120th meridian. My geographical position at the time I seized the "Quadra" was 5.7 miles off the northernmost of the North Farallones and in a direction about due west magnetic. This position was determined by bearings. I took bearings by compass. The compass had been corrected about three months before, I think. Correction was done right here in San Francisco Bay by me. No certified compass adjuster did it. The deviation on the compass was one degree. I have a card on it. It is in the wheel-house of the "Shawnee" and I can produce a copy of it in court to-morrow. I cannot produce the original because it is the property of the Government and is required in the navigation of the vessel. The vessel is not on duty now. If

(Testimony of C. F. Howell.)

I may change that answer, I will bring you the original, because I have just had a lot of overhauling, and the first thing I have to do when I get under way is to compensate again. I will bring the original, because the original is no longer correct, probably; I have to compensate again before I go to sea.

I do not remember my latitude and longitude at the time I seized the "Quadra." The only reference to that is with reference to this chart. These bearings on the chart were made at the time the "Quadra" was seized; the bearings that are plotted there on the chart were made by Ensign Morse and checked by me.

At daybreak on the 12th of October, 1924, we were over in [99] the vicinity of Drake's Bay. From there we went offshore out around Cordell Banks. I set a course generally westward, but I did not maintain it for any material time. I was cruising around and got foul of a vessel out there chasing whales and I did not want to interfere with his business, so we slowed down and varied our course, stopped, drifted, and that sort of business. I was in the vicinity of the boat chasing whales I should say three-quarters of an hour on the morning of October 12. The whaler and myself were in a position with regard to the North Farallones and Point Reyes about west magnetic, or a little south of that, from Point Reyes; North Farallones would bear roughly about southeast.

(Testimony of C. F. Howell.)

Q. Could you see the North Farallones from that position?

The COURT.—From what position—where the whaler was?

Mr. GREEN.—Where the whaler was working.

A. I don't remember looking for them.

I have been there many times. In the weather we had I believe you could see them from that position. With respect to visibility and clearness the day was very good. It was one day out of a thousand. I never saw a finer day on the Pacific.

The northern one of the North Farallone Islands is 118 feet high and the middle one 155 feet high, that is, the middle one of the North Farallones. The third one is just a few feet. On a clear day from a height of 21 feet you can see an object 155 feet high, I think, about 24 miles. The dip of the horizon at a distance of about ten miles is about 40 feet. That is just my recollection of the business. I do not make any effort to keep that in mind, because it is all in tables and you can look it up when you need it. I would not say it was nearer 20 feet. Whatever the table says, that is what the answer would be. If I really wanted to know I would look in the tables. I mentioned 21 feet, but about 24 feet is the height of the eye on the bridge of the "Shawnee." [100]

Q. From what distance can you see the surf at the bottom of the North Farallones?

A. Generally speaking, or that day?

(Testimony of C. F. Howell.)

Q. That day. A. I do not think there was any. There was not enough of a swell so you would pay any attention to it; it was what we speak of as a flat, calm day; there is a little wash, undoubtedly. There is always enough surf to make a wash at the bottom of the jagged rocks out there.

Q. And from the distance at which you say you seized the "Quadra" could you see the surf at the bottom of the North Farallones rocks?

A. No; I did not look.

From my recollection regarding these waters and these rocks, and as a man of experience, I would say that the surf could not be observed from the bridge of the "Shawnee" at the bottom of the North Farallone rocks from a distance of 5.7 miles. You cannot observe it at that distance. The reason is that it is not visible that far.

Q. Do you mean it dipped down the horizon, the curve of the earth hid it?

A. No, there is so little of it I would judge you would not see any break on the Farallones in the weather that we had out there, certainly not more than two miles.

Q. You could not see the white line of the surf at a distance of more than two miles.

A. That is my answer.

(Rep. Tr., pp. 79, 80.)

In my conversation with Captain Ford, the master of the "Quadra," as I approached him, he used a megaphone in that conversation. We were about 100 yards apart. He invited me aboard the

(Testimony of C. F. Howell.)

"Quadra" to check his bearings in regard to his position. He said he had taken horizontal angles and asked me to come over and check his position. He did not say what object of land he had taken the horizontal angles off. I recognize a horizontal angle as being a very definite means of obtaining a ship's position, if the known [101] points of land are visible. It is not more definite than close compass bearings. It is the same thing; save for the possible errors of the compass it is the same thing. It is the angular distance between objects, but the cross bearings are taken with the eye, and the horizontal angle is taken with the sextant.

Q. So you would say, would you not, in the final analysis that perhaps the horizontal angle taken by sextant was a little bit more definite and true?

A. The deciding element in that, I believe, would be the distance of the objects observed. There would be circumstances under which a horizontal angle would be possibly the best means obtainable in fixing the position. There would be other circumstances in which distance would be a considerable element in which your horizontal angle would be of comparatively little value. It would also obtain when your horizontal line is taken from two objects that are very similar in appearance to each other, so that you might have difficulty in recognizing the direct and the reflected image; but theoretically the method is beyond any question a very excellent one.

(Rep. Tr., p. 82.)

There might be difficulty in regard to taking

(Testimony of C. F. Howell.)

your horizontal angle off Point Reyes and any of the Farallones in this particular: It would depend on which way he took the angle. If he puts the big reflector image on top of the little direct image he would cover it up so he would not have any very sharp lines. It would hide it. But if he took it the other way there is no reason why he should not get a good one. In my opinion from a distance of say 15 or 20 miles, with objects such as the Farallone Islands and Point Reyes, and on a day such as the day in question, a horizontal angle would be a pretty definite means of obtaining a ship's position.

It was reported to me that Captain Ford mentioned a vertical angle; I cannot be sure whether he said it to me or whether an officer [102] that I sent over reported it to me, but I know that he had mentioned taking a vertical angle. The question of whether, at a distance of say 20 miles, a vertical angle off Point Reyes would be quite a definite means of obtaining a ship's position on a day such as the day in question would depend largely on circumstances. The angle at the ship, taking a vertical angle off Point Reyes at that distance would be quite acute. The height of Point Reyes is 597 feet, and that is a material height in taking a vertical angle.

As far as I know the only means of taking cross-compass bearings is with the pelorus, as one of my assistants did, or with the compass itself, as I did.

I have taken head-on bearings. That is done

(Testimony of C. F. Howell.)

by heading your ship for the object and noting your course. That is not a more definite way of taking them than the method I used. It is not equally as definite. It is not as accurate. I do not think it is as accurate, because you are at the mercy of the man steering the ship instead of the man in command of her.

Q. But the ship being steady and being brought head-on to the object, there can be no more definite way of taking a bearing than that, can there, Captain?

A. The whole thing is the same situation, you want to get the bearing of a given object; there is probably no particular discussion as to how to get it. The answer might seem foolish, but the way to get it is simply to get it, it doesn't make much difference how you do it.

Q. It doesn't matter how you do it?

A. Absolutely not. You assume you are doing it correctly in every case. If you do it correctly, if you do it accurately, the method does not make any difference; if you do not do it accurately the method does not help you a bit.

Q. Then, as I understand it, and I think you do also, I think we are agreed on it, the head-on method is just as good as the other as long as the bearings are taken correctly? A. Yes.

(Rep. Tr., p. 82.) [103]

The head-on method of taking bearings is not an unusual one. It is very often done when it does not entail any material change of course. For in-

(Testimony of C. F. Howell.)

stance, if a vessel were laid to, with just a little way or maybe no way at all, only a few revolutions of the propeller would give her way enough to swing the head in order to take the head-on bearings.

Captain Ford did not say anything to me about taking an ex-meridian altitude of the sun at that time.

Q. An ex-meridian taken at that time, Captain, would have been a definite way of checking the ship's position, would it not?

A. Not in the presence of six objects.

Q. But you would not use the six objects, of course, in that regard, but as a means of checking on your bearings on the six objects?

A. It is axiomatic at sea that a good sight is likely to vary as much as three miles; cross bearings should not vary as much as 300 yards. So that, comparatively speaking, if you take cross bearings and feel that you have taken them right there is no use doing anything else.

(Rep. Tr., pp. 84, 85.)

If you took an ex-meridian at that time and checked it out to the same position you would call it a check on your bearings. I would say it would be accidental if you got it. The length of time it takes to take an ex-meridian depends entirely on the ability of the worker and the taker. I would say it would take an average deep sea navigator, for instance, a man who had commanded deep sea vessels, about twenty minutes to take and work up

(Testimony of C. F. Howell.)

an ex-meridian; that would depend also somewhat on the time from noon; if it is very close to noon he would have less calculations to make than if he were some fairly considerable distance from noon. Based on my experience, I think it is possible to fake an ex-meridian or any sight that was ever taken. In my opinion it would take twenty minutes for the [104] average mariner to take and work up an ex-meridian altitude. I imagine it would take the average navigator several hours to take one and work it backwards.

At the time I had the conversation with Captain Ford he seemed very positive of his distance and he invited me on board to check it. I did not see fit to do that, as I had my own position and I was lying practically alongside of him. The officers that I sent on board the "Quadra" were competent to verify the position. From their report they were invited to the bridge by Captain Ford and invited to take his position, that is my official knowledge. They did not do so. Had I told them to it would have been a very easy matter for them to have done so.

The tow-line was made fast to the "Quadra" at 12:35 and the tow commenced shortly after that, almost immediately after the line was properly fast. We used a 6" hawser to tow the "Quadra." When we started towing we steered a course about 90, East magnetic. I will point it out on the chart.

Q. I will mark that "towing course."

The COURT.—Mr. Reporter, the witness has re-

(Testimony of C. F. Howell.)

ferred to a line on the chart which Mr. Green has marked "towing course."

(Rep. Tr., p. 87.)

We followed the channel between the North Farallone and the Middle Farallone. We altered our course when the northward of the North Farallones was abeam. We altered our course to 68.

Q. Which line on the chart I have marked "towing course continued"; that line I have so marked, Captain, is the continuation of your course to San Francisco after you altered it?

A. No, we did not continue that course all the way to San Francisco. As a matter of fact, the course we made good put us to the southward of the Light Ship and we went on up to the northward again. There is a curve out there.

(Rep. Tr., p. 87.) [105]

We again altered our course right alongside the light ship—to the south of the light ship. This was the course we steered, but it was not the course we made good. The current carried us down. The current out there is about south southeast, magnetic, and the velocity of the current varies from three-quarters of a knot to a knot and a half. At the time we seized the "Quadra" and started towing I figured it would be about midway between those two limits—about a knot. That would not help the speed of the "Quadra" tow. That was setting practically right across the course, at right angles to the course. That would send us down to the southward. It would not send us

(Testimony of C. F. Howell.)

ahead any. At the time we commenced towing the "Quadra" the revolutions of the engine were 35. We increased it in about ten minutes to 50 and continued at 50 throughout the tow into San Francisco.

(Wednesday, March 11, 1925.)

Cross-examination of C. F. HOWELL (Resumed).

The maximum speed of the "Shawnee" is 12 knots. Her indicated horse-power is about 1400 and, I believe, her nominal horse-power is 1100. She has triple engines, which make 126 revolutions at full speed. The normal cruising speed varies, of course, with conditions; I should say it would average 9½. The standing order to the engine-room is that, unless otherwise ordered, the speed will be 100 revolutions, which gives her a speed of about 9½ knots; 65 revolutions give her about 6; 50 revolutions give her about 4.8. I do not know the dimensions of the propeller of the "Shawnee." She has not a towing wheel. She is not built for a tug. She is built for a coast guard cutter.

The "Shawnee" has, in fact, the lines, the power and the build of a tug-boat. I do not know it to be a fact that she is considered to be the most powerful tug in San Francisco Bay. I reckon [106] it is the general reputation of the boat. The "Shawnee" is 149 feet in length, 29 feet beam, and about 11 feet depth of hold. I do not know the size of the "Quadra" in figures with any accuracy. Compared to the "Shawnee" she is longer, leaner, possibly about the same depth.

(Testimony of C. F. Howell.)

Her lines are finer. The reduction in the speed of the "Shawnee" when she has a tow of the size of the "Quadra" is one-third. The speed when we were making the tow of the "Quadra" under 50 revolutions was 3.2 miles an hour. I ascertained this by taking the bearing of Noonday Rock when it was abeam, and held that course, and took the bearing of the North Farallone when it was abeam, in the time of 59 minutes, and that is a distance of about 3.2 miles.

I di not know the pitch of the propeller of the "Shawnee." The percentage of slip on the propeller of the "Shawnee" when towing in that case was about 30%—33 per cent; that is, steaming with the tow; that is the normal slip plus the slip due to the tow. The normal slip is about 15%, I think. I did not tow a patent log at any time.

I corrected the compass of the "Shawnee" myself about three months prior to the seizure, or a little longer. It was on the 25th of May, 1924. There is no coefficient A on the compass. It is an element which goes to make up the deviation, which was one degree. That is not on all points of the compass. It is the maximum deviation. On a great many points there is not any deviation.

I brought with me this morning a card which is a copy, practically, of the deviation card that was then in use, because we are required to compensate the compass every six months and this compass was compensated on November 12. No change was made in the magnets and there was no change

(Testimony of C. F. Howell.)

found in the deviation, so that deviation card is the same as the one previously in use; that is, the compensation taken at the seizure of the "Quadra" showed no deviation and no change in the deviation. From the one we had in May there was no further compensation. We swung for deviation and [107] there was no change. We had to substitute a card, because our regulations require a new one every six months, so that our card for November was the same as the one for May.

Coefficient B is the component part of the magnetism of the vessel with a deviation of the compass caused by iron in the ship placed in a fore and aft direction relative to the compass. It is greatest on magnetic north and south.

Coefficient C on the compass is the error occasioned by location of iron in an athwartship position. It amounts to nothing on the north and is greatest on the east and west.

Coefficient D on the compass is the error occasioned by soft iron. It is nothing on all the cardinal points and greatest on the semi-cardinal.

In towing into San Francisco Bay I passed Fort Point three minutes after ten. It took 45 or 40 minutes to take the "Quadra" to where we left it.

With respect to whether I definitely told you that the North Farallone rocks could be seen from the position of that whaler on that morning, I told you I did not know whether they could be seen or not, I think, because I did not look for them.

Q. But I believe you said your opinion was that

(Testimony of C. F. Howell.)

from that distance on such a day they could be seen if they were looked for?

Mr. GILLIS.—I think the record will show what he said.

The COURT.—He said they could be seen on that day 24 miles.

(Rep. Tr., p. 95.)

I should say the position of the whaler was about 24 miles from the North Farallone rocks while we were with the whaler. I do not know the name of the whaling boat. I do not know whether it was the "Traveler." After I left the company of the whaling vessel I stood to the southward, under the counter of the "Principio." That vessel was in the vicinity of Cordell Banks. I know I was on the [108] Cordell Banks because the "Principio" was anchored on the Cordell Banks, and it is too deep to anchor around it. I do not remember the course I lay after I left the "Principio." I think I have a way of ascertaining that course. I altered the course between the Cordell Banks and where I seized the "Quadra" in a direction offshore. My course was not continuously offshore from the Cordell Banks to where I seized the "Quadra." The course from the Cordell Banks originally was directly for the vessel that turned out to be the "Quadra." As we approached that vessel she got under way, and I decided to chase her, and to shorten the distance as much as possible I would have to run in chasing her. I changed my course offshore to head her off, and I did that

(Testimony of C. F. Howell.)

a couple of times. By saying the "Quadra" was under way, I did not pay any particular attention to the speed she was making. I should say she was going quite slowly. She was barely moving. I do not know whether she was making any attempt to escape. She was headed inshore. Presumably when he saw me he headed offshore, so I assumed that was an attempt to escape from me. There was no other reason for his doing it. What I know is that he changed his course and swung his ship around. I should judge I was about 11 miles away from the "Quadra" when I first sighted her. I reckon that if the "Quadra" could be seen at that distance by me that the "Quadra" could have seen the "Shawnee." The only difference would be the difference in the color of the vessel; that might have a slight effect, but very little. We were white and yellow and they were black. Black would be easier to see. I do not remember when I lighted the lights on our vessel on the tow in. Lights are lighted on vessels at sundown. I do not remember when it became dark on the tow in. When it became dark we were between the North Farallones and the light ship, I do not know how far.

Q. Would you say that you were in quite close—well, not close, but that the South Farallone Lighthouse was about abeam when it became [109] dark, when the sun went down?

A. No. My opinion would be that the southeast Farallone was abaft the beam when the sun went down.

(Testimony of C. F. Howell.)

Q. Would you say how much?

A. No. I paid no particular attention to it.

Q. Don't you remember, Captain, that when you passed the lighthouse that the light was lighted in it? A. No.

Q. How far past it would you say you were when they lighted the lighthouse?

A. I did not see them when they lighted the lighthouse.

(Rep. Tr., p. 98.)

I did not pay any attention to the South Farallone lights; no attention at all. During all of the course of the tow I was on the bridge.

I do not know how old this sounding tube was that was used. The date of issue does not make any difference; it does not show on it. When we seized the "Quadra" we could not see Noonday Rock buoy, which has a height of about six feet. We were not practically on top of it. We were somewhere around three miles away from it. I have not a pair of dividers here. My recollection is that we were three miles from the Whistling buoy on Noonday Rock. The buoy shows on the chart. Sometimes you see it at that distance and sometimes you do not see it until you are practically on top of it. You do not ever see the rock itself; it has three fathoms of water on it. I do not know whether this was an ideal day to see it from a distance of three miles. In any event I did not see it. I did not correct my time prior to the seizure, but we get the tick on the radio every

(Testimony of C. F. Howell.)

day practically. Only one sounding was taken under my direction. My last detail of duty on those waters is just three years and two days. During that time I don't suppose I would average in the vicinity of the Farallones more than probably once a week. I have not been outside of them once a week during the last three years. Very frequently I go to the northward; almost as frequently [110] I go to the southward; and do not go outside the Farallones. I am familiar with their appearance. I can pretty well judge the distance I am from them by their appearance. I consider myself a pretty good judge of marine distances. On this day at a distance of 5.7 miles I reckon they would stand out pretty plainly. I did not notice any haze around them. I could see the middle rock of the North Farallones.

Q. I was out there one day last fall observing the ground on the islands myself; I would like to have you take a look at the photograph, Captain, and tell me about how far away you think those rocks are.

(Rep. Tr. p. 100.)

A. I have not the slightest idea. I do not recognize them and absolutely cannot recognize those as the North Farallone rocks. I am familiar with their shape. I do not recognize the photograph of the North Farallone rocks taken under your direction from a position west half south. I would not say it is not a picture of those rocks. If I assume this is a picture of the North

(Testimony of C. F. Howell.)

Farallone rocks, I could not give you the slightest idea how far off your picture had been taken.

Referring to the little picture taken with another camera, I could not give you the slightest idea of the distance from which the picture was taken from those rocks. As to saying it was ten miles, I would not say anything about it. I cannot tell from the appearance of those rocks and from how much of the rocks is showing how far it is.

I could tell approximately from looking at the rocks themselves about how far off they are.

Q. How can you tell that?

A. I cannot form an estimate based on perhaps ten miles of distance by perhaps less than an inch of water and a couple of little spots that I can hardly see.

Q. The outline of the rocks is quite clear there; at least it is [111] to me. A. All right, sir.

Q. Is it clear to you? A. No, sir.

The COURT.—What is the purpose of this, Mr. Green?

Mr. GREEN.—It is very material, your Honor, depending on the answer the witness gives.

The COURT.—Why it is material?

Mr. GREEN.—Because it was taken at a certain distance.

The COURT.—Well, you can prove that by your own witness. He says he cannot tell, and very evidently he cannot; nobody can tell it from

(Testimony of C. F. Howell.)

a photograph. Remember that this evidence is addressed to the Court. I could not tell how far that was off; it would be utterly impossible.

Mr. GREEN.—I think it would be very easy to tell.

The COURT.—You could not even make the slightest guess at it, how far it is, as shown by the photograph. You may prove that the ship was lying at a certain distance. You could not expect this witness or any other witness who was not there to take a picture of that kind and judge that distance; I cannot conceive of that being done by anybody. I think it is impossible.

Mr. GREEN.—I don't think it is impossible, your Honor. I was out there once, and I can tell it.

The COURT.—You can show it if you want to. It certainly does not impress me as being so. I don't say that you cannot prove it, of course; it may be that you can prove it.

Mr. GREEN.—I respectfully assign the remarks of the Court on this subject as misconduct.

The COURT.—Very well. The jury has nothing to do with this.

Mr. GREEN.—I except to that remark also, your Honor. I think it is a question for the jury. [112]

The COURT.—You can take your exception.

Mr. GREEN.—Q. How do you tell how far the North Farallones are off by looking at them?

A. I don't know.

(Testimony of C. F. Howell.)

Q. Aren't they dimmer or clearer, as the case may be, or larger or smaller, as the case may be, more of them showing or less of them showing, as the case may be? Isn't that the way you tell the distance they are from you?

A. I think a sea-going man usually tells distance because he is trained to do it. There is no particular way of describing how he does it. You cannot see the Farallones at their maximum and at the same time see them at their reduced area. There is not any comparison. It is just a thing you learn by doing it. That is the only way I can describe it.

Q. From this photograph, Captain, you would not say you were within a mile of them? That would be out of the question, wouldn't it?

A. I would not say anything relative to that photograph.

Q. You would not say you were 20 miles away from them, would you, from this photograph?

A. I would not hazard any opinion as to the distance of those islands, based on that photograph.

Cross-examination by Mr. CROWLEY.

On the occasion I refer to I took the "Quadra" and the "C–55" into custody, and Pensotti and McKenzie came aboard the "Shawnee."

Q. That is, after taking custody of these two vessels they came aboard your vessel?

A. No, I took them when I found the "C–55" had contraband cargo and then I took the "Quadra."

(Rep. Tr., p. 104.)

(Testimony of C. F. Howell.)

It was after these men came aboard that I took custody of the "Quadra." I had this conversation with Pensotti and McKenzie at about the time we were taking charge of the "Quadra" or just a minute or two before, or perhaps a minute or two after. [113]

Cross-examination by Mr. O'CONNOR.

On the day of the seizure of the "Quadra" I did not, that I know of, have aboard the "Shawnee" a picture of the "Quadra."

On the day of the seizure of the "Quadra" I did not have a picture taken, or supposed to have been taken, of the "Quadra" when she was a lighthouse tender and was wrecked or sunk some place.

I think that on the day of the seizure of the "Quadra," some time after we were under tow and McKenzie and Pensotti aboard the "Shawnee," I went below or to my cabin and there secured a picture of the "Quadra" as a lighthouse tender showing it wrecked or sunk, and showed that picture to McKenzie and Pensotti. I think I did. I did not have the picture. I went to a man who had a picture of the "Quadra." I didn't know he had it. There was a picture of the "Quadra" aboard at that time. Ensign Morse had the picture. I did not at that time show to the defendants McKenzie and Pensotti a picture of some pet that was aboard the "Shawnee"—a picture of some mascot or pet. I think the only picture I showed to them was the picture

(Testimony of C. F. Howell.)

of the "Quadra." I did not have any conversation with regard to it. I undoubtedly called their attention to the picture when I was showing it to them. I do not recollect any conversation at that time. That was when they were on the forecastle of the "Shawnee." I do not know when that was. I do not know whether it was after we took the tow or not. It might have been before we took the tow. I do not knew when it was.

I do not recollect showing the defendants McKenzie and Pensotti a picture of any other boat and asking them if they knew the boat. I would say definitely that I did not.

I had a picture of the "Prince Albert." I do not recollect showing it to Pensotti and McKenzie. I will not say that I did not. I do not remember whether on the day that the "Quadra" was seized, and [114] while McKenzie and Pensotti were aboard and we were under tow, I displayed to them a picture of the "Prince Albert," or a boat claimed to be the "Prince Albert," and at that time ask them if they recognized or knew the boat. I will not say that I did not.

At this time I am unable to say at what point of time I displayed to McKenzie and Pensotti this picture of the "Quadra" that I secured from Ensign Morse.

Q. (By Mr. GREEN.) Will you tell me, Captain, what time it was you passed Noonday Rock buoy abeam on the tow in?

(Rep. Tr., p. 107.)

We passed Noonday Rock buoy abeam at 2:29.

(Testimony of C. F. Howell.)

We passed North Farallone Rock abeam at 3:30.

We were about a mile off from those objects when we passed them. We ascertained that by checking the distance first off Noonday Rock by eye, because we had not yet established our speed over the ground. Approaching the North Farallone, when you would come abeam it would establish the speed we were making. Taking bearings off North Farallone, when it bore four points off the bow and when it was abeam we would get the distance it was off when it was abeam. I did not attempt to judge that by eye, as I never attempt to judge anything by eye if I can find any other means of getting distance.

I have been in the coast guard service twenty-six years next August and have been court-martialled three times.

Mr. GILLIS.—Just a moment, may it please the Court. I don't know what the object of this is.

The COURT.—No. It is manifestly improper, Mr. Green.

Mr. GREEN.—Well, your Honor, the competency of the officer—and of the witness—is certainly in issue.

The COURT.—Not at all. The statute provides the one question you can ask along that line.

Mr. GILLIS.—Mr. Green knew that before he ever asked the question. [115]

Mr. GREEN.—The witness has said—

The COURT.—I don't want any discussion on it, Mr. Green; the objection is sustained.

(Testimony of C. F. Howell.)

Mr. GREEN.—I except to the Court's ruling.

Q. Do you remember, on the 14th of May, at about 7:30 o'clock P. M. ramming into the Red Stack tug "Sea Lion" and "Sea Fox"—

Mr. GILLIS.—Just a moment. To which I object as not proper cross-examination, and Mr. Green knows it is not proper cross-examination.

Mr. GREEN.—No, I don't.

The COURT.—Objection sustained.

Mr. GREEN.—Exception.

The COURT.—Don't ask any more questions like that, Mr. Green.

(Rep. Tr., pp. 107, 108.)

I have part of the record I made several different times regarding what happened on the 12th of October last year. I have a record of the point that I considered of the greatest importance. That record is in the bridge-book.

Redirect Examination By Mr. GILLIS.

When I stated that the "Quadra" was 5.7 miles from the North Farallone I meant nautical miles. The reason no patent log was taken after we had the "Quadra" in tow was: The patent log is designed to be accurate within fairly circumscribed limits. Ours in the "Shawnee" is accurate, most accurate, when we are making approximately ten miles—ten knots. Knowing that we were going to make considerably less than that, I knew that the patent log would not register correctly; and, further, I did not want it over the stern when I was towing because there is a long scope of line

(Testimony of C. F. Howell.)

made fast to it, and it would have to be gotten out of the way if I wanted to back the engine. In my judgment at that time the reading of the [116] patent log would have been of no value when I had the "Quadra" in tow. We put a six-inch hawser aboard the "Quadra" for a tow-line. That is the smallest tow-line we had. My object in putting a small tow-line on her was because it was damaged forward and her chocks were obviously very light and I wanted to be sure and not damage her, and so I ran the line that I considered small enough so that the line would carry away before it would wreck the "Quadra." Putting that line aboard the "Quadra" had an effect upon our method of operating from the time we first bore the line taut. It had an effect upon the speed at which we started and moved in. We would start very slowly and caution the men on the throttle-watch to increase the speed on signal very slowly and carefully.

Recross-examination by Mr. GREEN.

In addition to the reasons given Mr. Gillis for putting the light line aboard, I figured the "QUADRA" was an easy tow. I have towed larger vessels. I have not towed them as fast as ten knots an hour. I do not recall a tow of a three masted schooner not long ago at ten knots. From my experience it is not a fact that you can tow with the "Shawnee" practically at the speed of the "Shawnee" if you want to. I considered the "Quadra" to be an easy tow.

(Rep. Tr., pp. 40–110.)

TESTIMONY OF WELLINGTON S. MORSE, FOR THE UNITED STATES.

Testimony of WELLINGTON S. MORSE, called for the United States, sworn.

Direct Examination by Mr. GILLIS.

I am a member of the coast guard and have been since last August. My rank is that of ensign. I was with Captain Howell on board the "Shawnee" on October 12, 1924. I remember the occasion of the seizure of the "Quadra" on that day. When we approached the "Quadra," say within five or six miles, I was on the bridge on duty. [117]

Q. And as you approached the "Quadra" was any signal given to the "Quadra" by the "Shawnee"?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent, and not binding upon any defendants, officers and the members of the crew of the "Quadra," and another attempt to prove an overt act prior to the establishment of the conspiracy.

The COURT.—Overruled.

Mr. FAULKNER.—Hearsay, and the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—Answer the question.

A. At that time a signal was given to the "Quadra" to hove to, when we were within, say, about a mile of her.

Q. What was that signal?

(Testimony of Wellington S. Morse.)

A. Four blasts of the whistle.

Q. What did the "Shawnee" then continue to do?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception. It is understood, if your Honor please, that this objection is on behalf of all of the defendants.

The COURT.—Yes.

A. The "Shawnee" continued to proceed in the direction of the "Quadra."

Mr. GILLIS.—Q. You approached the "Quadra" from what side of the "Quadra"?

A. Upon the "Quadra's" starboard side.

Q. Did the "Shawnee" come up to the "Quadra"?

A. We went around under her counter and came up on her port quarter.

Q. Did the "Shawnee" stop then?

A. We stopped.

Q. Did you take any bearings after the "Shawnee" had stopped on the port side of the "Quadra"?

Mr. FAULKNER.—The same objection. [118]

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. As we neared the "Quadra," I was officer of the deck, and it was my duty to establish our own position, of course, and that of the "Quadra"; as we rounded under her stern, I was on the flying bridge, up on top of the wheel-house, taking a bearing of Point Reyes and the North Farallones. I

(Testimony of Wellington S. Morse.)

took those bearings with the pelorus in conjunction with the stearing compass.

(Rep. Tr., pp. 111, 112.)

Before we had got that close to the "Quadra," I should say when we were about five miles of her, she turned around and headed offshore. She had previously been headed in toward the beach. At that time I went on the flying bridge to set both of these peloruses to zero. My idea in that was to get a bearing of the "Quadra" with reference to the "Shawnee" and the Farallones, in order to establish an angle inside of which was the "Quadra"; the captain wanted to know about what her distance would from the North Farallones, and I set those peloruses and established her distance as about six miles. That is the greatest distance that she could have been at that time from the North Farallones. She was inside of a triangle whose greatest base was six miles. That is the greatest distance she would have been from the Farallones. At that time the "Shawnee" was approximately five miles north of the "Quadra." As we rounded the port side of the "Quadra" and came under her counter I got a bearing at that instant of Point Reyes, and as we swung by on her port quarter I noted the bearing of the North Farallones; and just at about the instant that we stopped to hove to I reported that position to the captain. I plotted that position on the chart. I drew the line of bearing of Point Reyes and put my parallel rulers down and got the line marking the North Farallones, and took my dividers

(Testimony of Wellington S. Morse.)

and marked off the distance and reported that distance to the captain. [119]

Q. Do you remember what that distance was?

Mr. FAULKNER.—The same objection, and the further objection on behalf of the officers and the crew of the "Quadra" that they are all acts occurring beyond the territorial jurisdiction of the United States.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. It was 5.7 miles.

Mr. GILLIS.—Q. From what?

A. From the northernmost Farallones.

Q. Will you just step down and examine the chart here, Government's Exhibit 1; calling your attention to the circle with the line drawn out to the word "position," what does that point represent inside of that circle?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. That point, right there, represents the exact position at which the "Quadra" was located at the time we seized her, according to the cross bearings that were taken at that time.

Mr. GILLIS.—Q. Now, did you see a sounding taken from the "Shawnee" at or near that time?

Mr. FAULKNER.—The same objection, and, further, not binding on any of the defendants in this case.

The COURT.—The same ruling.

(Testimony of Wellington S. Morse.)

Mr. FAULKNER.—Exception.

A. I took that sounding myself.

(Rep. Tr., pp. 113, 114.)

When the lead hit bottom I was at the sounding machine. I was taking the sounding; that is, I had a finger on the wire and was waiting for the lead to hit bottom. There is never any mistake [120] about that, especially with a ship stopped. I saw the sounding tube brought to the surface of the water and on to the ship. I had it brought to myself. When I got it I looked at it and saw the reading and gave it to the quartermaster to bring to the captain for his inspection. It was in the scale when it was brought to me to read the sounding, to read the depth. I saw the man put it in the scale and took it in my own hands and verified it myself.

I have seen Government's Exhibit No. 2 and know it to be the tube and the scale used at that time.

Q. When you read the sounding from this scale, what did it read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. It read 44 fathoms.

Mr. GILLIS.—Q. Did you examine the dial on the side of the sounding machine? A. I did.

Q. And what did the dial read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Testimony of Wellington S. Morse.)

A. The dial read 44 fathoms.

Mr. GILLIS.—Now, after the sounding had been taken, did you at any time recheck your bearings?

A. Almost immediately afterward, when the "C–55" came alongside—while we were taking this sounding the "C–55" had been brought to, and was coming alongside of the "Shawnee," and as soon as she was made fast I again went on the flying bridge and verified those bearings at the captain's orders.

Q. By what means did you verify them?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling. [121]

Mr. FAULKNER.—Exception.

A. By the peloruses.

Mr. GILLIS.—Q. In the same manner that you had taken them previously?

A. The same manner.

Q. What was the result of your retaking of the bearings?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. The position was exactly the same as given previously, 5.7 miles from the Farallones.

Q. Do you remember how Point Reyes bore from the "Shawnee'?

A. It bore 40 degrees true.

Q. Do you remember how the North Farallones bore from the "Shawnee"?

A. It was 114, I believe, true.

(Testimony of Wellington S. Morse.)

Cross-examination by Mr. GREEN.

When we were five miles north of the "Quadra" we were on a course, as I remember it, 125 per steering compass, which is about 143 or 144 true. For the enlightenment of the jury, that means that it is on a general southeasterly course. We were heading for the southern end of Cordell Banks to the vicinity of the North Farallones. The "Quadra" at that time was not very far to the westward of the North Farallones; she was a little north and west. As to remembering the exact course we were steering from the Cordell Banks, I stated it was 125 per steering compass. We are not in the habit of remembering every course we steer in a day. When we rounded the stern and came up on the port side of the "Quadra" she was farther away, from the North Farallones than when we first sighted her. She had steamed out a distance farther from the Farallones when she was captured than when she was first sighted. My recollection as to her headway is it is my judgment, that is all I have to go by, of course I do not know [122] just what speed she was making, but I will say that she covered at least two miles from the time she turned around to the time we hove her to. At the time we hove her to she was a couple of miles or more, a little bit more—two miles maybe—from the whistling buoy on Noonday Rock. I could see the buoy. It was very close. I would not say that she was practically on top of Noonday Rock Buoy when I first saw her, because it was to the northward of

(Testimony of Wellington S. Morse.)

Noonday Rock Buoy. We established that, where she was, when we picked her up. I could not see Noonday Rock buoy when I first saw her turn around and head out; apparently she was making the best she could make; she was smoking up very strong, and it looked like her fires were cold. I did not go aboard the "Quadra," but I have seen vessels get under way in a hurry before, though, and it looked very much to me as though she got under way in a hurry; that is my candid and honest opinion. As to whether she got up full speed, I would say she was making the best she could right then, and I believe that was the opinion of most anybody else on deck. As to Captain Howell's testimony, I am giving you my honest opinion; his and mine may not agree in that particular. She was not making much, doing the best she could. I don't know if she can make much.

I took one sounding. That is the only one that was taken. I was on the bridge the rest of the day. I was the navigating officer of the "Shawnee."

(Questions by Mr. CROWLEY.)

We rounded the stern and took our vessel on the port side of the "Quadra"; when we virtually lost all headway; we were at a standstill, of course, on the quarter of the "Quadra"; we did not advance any farther than we did under her side. I took the soundings when we were standing still.

Q. Was it when you came to the port side and stood still there, [123] the port side of the "Quadra," that you took your soundings?

(Testimony of Wellington S. Morse.)

A. We took the soundings—the vessel, of course, was swinging.

Q. Please answer as briefly as you can.

A. Yes, when we were still; we did not get under way.

(Rep. Tr., pp. 118, 119.)

After taking the sounding I made a recheck of certain bearings that I had taken. The "C–55" had been alongside when I went up to make the recheck.

Q. I understood you to say on your direct examination that, in connection with your recheck that that was the time the "C–55" came alongside?

A. Yes, but the "C–55" was alongside when I went on the flying bridge and took the soundings, or took the second set of bearings.

Q. The "Quadra" was in the custody of the "Shawnee" at the time you were then on its port side, taking your soundings?

(Rep. Tr., p. 119.)

The "Quadra" was not seized until after the "C–55" came alongside. We had just hove the "Quadra" to and sent after the "C–55," and when the "C–55" was returned the captain was taking care of the procedure in seizing her. I was taking care of that part of it which related to establishing our position. When I was establishing our position on the port side of the "Quadra" the "Quadra" was hove to. We were about 150 or 200

(Testimony of Wellington S. Morse.)

feet from her. It was then the "C–55" came alongside.

(Questions by Mr. GREEN.)

I took the sounding at about 11:50 or 11:55, right after I had taken the bearings to establish the position,—immediately we hove to alongside of the "Quadra." Everybody could see me take the bearing on the flying bridge. I was in full view of everybody.

Q. Did you plot your position when you took these first bearings that you have testified to when you were about five miles north of [124] the "Quadra"? A. You mean plot it on the chart?

A. Yes.

A. No, I did not. I did not think then that it was necessary, it was just an approximation to find out just—the idea was that when we start in hot pursuit of a vessel, we can travel after her and get her, and we have to establish some kind of a position from which we start this hot pursuit from; that is what the captain wanted that approximate position for. I could not see her position between the Farallones and myself, that is, in a vertical line, but I could see her water line, and I could not see that on the Farallones, so I knew that she was between the Farallones and me; I knew she was not any more than six miles away from the Farallones, because this triangle which I had there of these bearings brought her inside of that, and I told the captain that she was 5½ miles west northwest of

(Testimony of Wellington S. Morse.)

the Farallones, of the North Farallones. That was my best approximation.

(Rep. Tr., 121.)

I was then five miles away northerly, possibly a little bit to the westward; I should say maybe about north by west or north northwest. I was probably about five or six miles from the Cordell Banks at that time. They lie at that time a little west of north—about north northwest. I did not take that bearing when we were rounding under the counter of the "Quadra." I did take a bearing while the "Shawnee" was rounding under the counter of the "Quadra." Those on the "Quadra" may have seen me take the sounding. The ship was swinging to the right all the time. When we had stopped she was just laying there in the swell, and she was kind of working toward the "Quadra," her bow was heading toward the "Quadra," and if they were observing at all they may have seen it in certain parts of the "Quadra." But those who were right in line with our deck-houses, etc., on the "Quadra" could not have seen it, of course. The distance was not so great that they could not have seen it. You could have [125] thrown a potato from one to the other. At the time we were taking the sounding the "C–55" was coming alongside. She had been hove to and was returning to the vessel, returning to the "Shawnee"; apparently she was turned about and was coming toward the "Shawnee."

The sounding machine is located on the port side

(Testimony of Wellington S. Morse.)

of the "Shawnee," and the "C–55" came alongside of the port side.

At the time we took the first bearings our ship was on her course.

Mr. GREEN.—Q. Rounding to is not being on a steady course, is it?

A. She was coming under her stern when I took the first bearing. I took that as we were just passing her stern, that was taken off Point Reyes; the first bearing was taken at Point Reyes; and when she came around possibly about 20 degrees more I took a bearing of the Farallones; she was not swinging fast; in fact, when the first bearing was taken she was not swinging at all; she was headed on a course straight down past the stern of the "Quadra."

Q. I wish you would tell me how you arrived at this triangle that you are talking about when you took the observation to find out approximately how far the "Quadra" was off the North Farallones when you did not plot it on the chart?

A. I used a course line, the course we were on, as one line, and that left the Farallones on the port hand; I took a bearing of the Farallones and brought her up to that line; I also took a bearing of the "Quadra" and saw the angle that she made with our course line and the base, of course—I just drew a line at 90 degrees from the Farallones to the line of our course.

Mr. GREEN.—Q. Where did you draw those lines?

(Testimony of Wellington S. Morse.)

A. Well, you do not have to draw that line; that is apparent.

Q. What were you working on when you did this?

A. Parallel rulers, on that chart there.

Q. On that chart? A. On this chart, yes. [126]

Q. You made no lines at all with a pencil?

A. We make as few lines as possible on charts; we have to use them over and over again.

(Rep. Tr., pp. 123, 124.)

I do not recall making a mark with a pencil of this line. The captain wanted an approximation of her distance from the Farallones—at best it was only an approximation. That was all there was to it at that time. I have forgotten now what the bearing off the Farallones was at that time. I probably could not tell you in degrees. With relation to the ship's keel it was just a few degrees on the port bow, I should say about two points, about twenty-five degrees, twenty-two or twenty-five degrees. We had the Farallones on the port hand about two points. The "Quadra" was maybe a point on the port bow. We were intercepting her; we were heading her off. She was not making knots, as you might term it, but from the smoke that was coming out of her stack it looked like she was firing up pretty strong. As to her speed, I do not suppose she was making more than about four at that time, if she was making that, four knots an hour. It is not a fact that she was not making headway, because we changed course several times

(Testimony of Wellington S. Morse.)

to intercept her. We were about five miles away from her when she changed her course from inshore to offshore.

We passed the "Principio" upon the Bank right under her counter once that morning; I should say at that time we were maybe one hundred and fifty feet from her. When we left her I imagine we were around that distance from her. We drifted around there a while; I imagine we were probably a mile south of her. I do not know her position exactly. It was on the south end of the Cordell Bank. It was not necessary to take any sounding there to find out whether or not you were on the Bank. I know that because vessels don't anchor in more than one hundred fathoms of water with anchor cables out; she had anchor chains out. I knew she was anchored from that fact, because we could [127] see the tend of her cable. From that I knew she was anchored on the Cordell Bank. She had her anchor out there, hanging up and down. We left there about 10:30, or some matter of that sort; that, of course, is a matter of record. I think it was 10:54, if I remember correctly. It is a matter of record in the logs, the ship's logs. The engine-room logs will show when we were under way. On the trip of the "Shawnee" down from Cordell Banks we were making full speed, I should say about 120 revolutions, which would be twelve knots. It is not available to run the "Shawnee" any faster than that. I guess you could if you wanted to shake her to pieces. Twelve is the most we ever

(Testimony of Wellington S. Morse.)

tried to make with her. The "Principio" was lying, as I remember, just about south of the center of the Cordell Banks. It took about an hour from the Cordell Banks to where the "Quadra" was. We were under full speed all the way. Well, we ran at standard full speed at first until we saw this vessel change its course. It apparently was a vessel headed for San Francisco when we first saw it that morning. We did not get down to full speed until it apparently looked like what we term out there a "rum runner." We first saw the "Quadra" early that morning, about eight o'clock. We were then in the vicinity of Cordell Banks. We just noticed a ship to the southward, headed in, with the trisail set. She was in the same position when we started for her several hours later.

The COURT.—Let me get at that just a moment.

Q. You saw her at eight o'clock in the morning?

A. Yes, sir.

Q. Within six miles of the Farallones?

A. She was just in the same relative position. We saw her that morning when we were hovering in the vicinity of the "Principio." Then there was a small boat, the "C-731," I believe, that had come away from the side of the "Principio" and we chased her out to sea four or five miles and intercepted her and searched her and then we went back and lay under the stern of the "Principio" just to put her business on the blink for [128] the day—that was all—and happened to notice this vessel down to the southward again, in the same

(Testimony of Wellington S. Morse.)

place exactly, stationary, and we came to the conclusion that she was anchored on Fanny Shoal. The captain said, "Well, we have nothing to do but just hang around the 'Principio,' let us go down and look that fellow over, we can see the 'Principio' from that position just as we can see him from our position."

Q. Then the "Quadra" had been in that same relative position, as I understand it, for several hours?

A. Yes, it had not moved, apparently.

(Questions by Mr. GREEN.)

I remember being in company with a whaler some time that morning early, about 7 or 7:30, or some such matter. We were possibly six or seven or eight miles east of Cordell Bank at that time. We were between Point Reyes and Cordell Bank, a little to the southward. I don't just remember whether we stayed with the whaler any longer than 7:30. I was not on watch until eight o'clock. I was around there, maybe I was shaving, and perhaps looking out of the port. We were trying to keep clear of the whaler; she was chasing a whale or two at that time, and we were keeping out of their way. If the whale would cut across our bow, we would stop and let the whaler go ahead, we were not going to interfere with him. They did not shoot any whales out there at that time, but there was a whale on the bow and we could not understand why he didn't let go; she was very close to us.

At eight o'clock we were in the vicinity of the

(Testimony of Wellington S. Morse.)

Cordell Banks and the "Principio." I had not noticed the "Quadra" up to that time. I was not on watch. I probably had just gotten up a little while before. The "Quadra" made a larger angle with us at that time. We were probably a little further away at that time. [129] If we were westward of the Cordell Banks we would be closer, that is what I say, that at that time she was probably a little further away from us than she was when we got up on the Cordell Bank. I figure that out because where we were on the Cordell Bank she was almost directly south of us, whereas, in the position of the whaler, she was at an angle of about 45 degrees. When we were on the Cordell Bank she was a little south and to the eastward, nearer south than east. I do not know how much further away she was when we were with the whaler than when we were on the Cordell Bank; I did not measure; I did not see her; I would not hazard a guess; I would not say. I cannot picture those angles in my head and measure out the hopothenuse there, because it would be a very wild guess at the best, but the chart is right here. We sighted the "Quadra" when we were on the Cordell Banks; we just noticed her; she looked like a ship headed in. We could see her masts and her stack. We saw the sails set. That is what attracted our attention to her. If she didn't have her sails set, maybe we couldn't have seen her. We could not see her hull; her hull was down.

(Testimony of Wellington S. Morse.)

Redirect Examination by Mr. GILLIS.

The sounding line on the "Shawnee" is dropped astern. We have an outrigger there to keep it clear of the stern and it drops from the stern.

TESTIMONY OF H. ROTHE, FOR THE UNITED STATES.

Testimony of H. ROTHE, called for the United States, sworn.

I am a member to the coast guard and was on the "Shawnee" on October 12, 1924, the day the "Quadra" was seized. I recognize Government's Exhibit 2. That is the Tanner-Blish sounding tube and the scale used when a sounding was taken on that day when we were near the side of the "Quadra." I was on the bridge at the time the sounding was taken. It was brought up and shown to Captain Howell. [130] I was directed to take where the reading came, because when these tubes dry out there is no way of telling where the reading is, and I was to take this tube in the scale to mark the reading.

Q. What did it read at that time?

A. 44 fathoms.

Mr. FAULKNER.—Just a moment. I ask that the answer be stricken out in order that the defendants may object to that as immaterial, irrelevant and incompetent, and the proper foundation is not laid, and not binding upon any of the defendants in this case, and an act occurring beyond the territorial jurisdiction of the United States.

(Testimony of H. Rothe.)

The COURT.—Let the record show that the objection was made before the answer, and the objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., 131.)

I was not astern of the "Shawnee" when the sounding tube was brought up. I did not hand the tube to the captain at the time it was brought to the bridge. At that time I was standing by the captain. Another quartermaster brought it up from the stern, and the captain directed me to take it after he read it. I read it.

Q. What did it read?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. 44 fathoms.

(Rep. Tr., p. 132.) [131]

TESTIMONY OF AUGUST ANDERSON, FOR THE UNITED STATES.

AUGUST ANDERSON, called for the United States and sworn.

(Questions by Mr. GILLIS.)

I am a member of the coast guard, of the rank of chief boatswain, and have been a member for a little over 32 years. I made a test of the speed of the "C–55."

Q. What was her average speed?

A. 6.6 knots per hour.

(Testimony of August Anderson.)

Mr. FAULKNER.—We ask that that go out for the purpose of objection.

The COURT.—Let it go out.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, not within the issues of the case, too remote, too general, the speed of the "C-55" to-day is not necessarily the speed of the "C-55" as of October 12, or any other time, not binding upon any of the defendants, individually or collectively.

The COURT.—I suppose the question, Mr. Gillis, is directed to the provisions of the treaty between the United States and Great Britain?

Mr. GILLIS.—Yes, your Honor; I am simply covering all points. Personally, I take the view it is not necessary to do it, but I appreciate the fact that there may be a record go on appeal, and I simply wish to put in all of the evidence that is necessary to cover all points.

The COURT.—Any other objection?

Mr. CROWLEY.—Yes, may we have an objection to this testimony, the same objection as we made when Captain Howell was on the stand, and made at length?

The COURT.—Yes. [132]

Mr. CROWLEY.—And exception.

Mr. FAULKNER.—May I indicate this to your Honor in connection with the reason that prompts the offer of this evidence, it is incumbent upon the proper foundation being laid to show that this speed is the speed at the time the ship was alongside of the

(Testimony of August Anderson.)

"Quadra"; no other speed is controlling upon the Court, or gives them jurisdiction under the treaty for the seizure of either the "C–55" or the "Quadra." Now, Mr. Gillis has announced his purpose, and, therefore, if he sticks to the purpose for which he offers the evidence, he must confine himself to legal evidence under that treaty.

The COURT.—Of course, you are familiar with the provision of the statute with regard to presumption, and one of them is the condition that exists is presumed to have always existed; if there was any change in the speed of the boat from the 12th of October to the time the test was made, of course it would be a proper matter to be shown.

Mr. FAULKNER.—This question has been passed upon in a similar case to this, in which the District Court of Connecticut held that the speed of a revenue cutter loaded and empty is not controlling upon the speed of a revenue cutter laden with liquor.

The COURT.—What does the treaty between the United States and Great Britain say?

Mr. FAULKNER.—The treaty between the United States and Great Britain is in this language: I will read the article under which, of necessity, Mr. Gillis' evidence must come in: "The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. [133] In

(Testimony of August Anderson.)

cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised." Now, in passing upon the speed of a vessel other than the vessel which was seized, the District Court of Connecticut has determined that the speed, under the circumstances, in regard to sea, wind and tide, the speed under the circumstances under which the vessel is laden, is the only speed to determine the right of the seizure of the other vessel.

The COURT.—At the very time of the seizure?

Mr. FAULKNER.—At the very time of the seizure.

The COURT.—I do not agree with that, at all. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. GREEN.—I would like to make the further objection that no proper foundation has been laid in this, in that it has not been shown that any liquor was intended to be conveyed to the United States by the "C-55."

The COURT.—Of course, Mr. Green, that is, again, a question of the order of proof, and, of course, if it be not shown that the vessel was engaged in the business of conveying liquor, there may be something to that. You can renew that

(Testimony of August Anderson.)

objection at the proper time. For the present it is overruled.

Mr. GREEN.—Exception.

Mr. O'CONNOR.—That objection, if your Honor please, applies to all the defendants?

The COURT.—Yes. [134]

Mr. O'CONNOR.—And exception.

Mr. GILLIS.—Q. Now, you may answer the question, Mr. Anderson, the average speed of the "C-55." A. 6.6 knots per hour.

Mr. GILLIS.—That is all. You may cross-examine.

(Tr., 133–136.)

Cross-examination.

(Questions by Mr. GREEN.)

I made this test on February 17, 1925, by running over a course between the buoy on Alcatraz Island and the buoy on the west end of Angel Island. I know the distance between these buoys. It is fixed on the chart. The charts of the Bay of San Francisco—the charts of the San Francisco Bay issued by the Coast and Geodetic Survey. No preparations were made except boiling the engine, that is all, and taking the water out of the bilges of the vessel. It was not laden at the time of the trial. There was no cargo on board of any kind. There were three people on board. It was made in the afternoon. I ran over the course between the buoy on Alcatraz Island and Angel Island several times. The tide on that day was just about slack water, just on the turn of the tide. I never ran her out

(Testimony of August Anderson.)

west of the Farallones. The condition of the weather was nice, it was a sort of westerly breeze, a little choppy, but not very much. I had the breeze on the beam. It was done some time in the afternoon. It covered quite a little time; I do not exactly remember the exact hour, but it was in the afternoon; I think we started out somewhere around after one o'clock or something like that, if I remember right. The distance on the chart that I refer to is nautical miles. The fuel was on board the vessel. I didn't add anything to it. I didn't put any preparation [135] into the gasoline. The distance we traveled was between the two buoys, which was 5,400 yards. I fixed that distance by measuring off the distance on the chart by the scale of the chart with dividers and no other way. I did not run her over any other course. I just ran her several times over this same course, and those are all of the facts upon which I base my opinion as to her speed.

(Rep. Tr., pp. 133–136.)

TESTIMONY OF H. S. CREIGHTON, FOR THE UNITED STATES.

H. S. CREIGHTON, called for the United States and sworn.

(Questions by Mr. GILLIS.)

My position with the Government is that of customs agent, and have been one about sixteen years. On October 15, 1924, I had occasion to visit the "Quadra" in San Francisco Bay. I was on it on

(Testimony of H. S. Creighton.)

that day. I recognize the book you show me. I found it on the shelf in the supercargo's cabinet of the "Quadra" on October 15th.

Mr. GILLIS.—I ask that the book be introduced in evidence and marked "U. S. Exhibit" next in order.

Mr. FAULKNER.—If the Court please, we object to that on the ground that the book is immaterial, irrelevant and incompetent, hearsay, no proper foundation laid, not within the issues of the case, and another attempt to prove an overt act before the establishment of a conspiracy, not binding on the defendants jointly or severally; and upon the further ground, if the Court please, that the offer of this book in evidence is in violation of the rights of the defendants, each of them, jointly and severally, under the Fourth and Fifth Amendments to the Constitution; and particularly on all the grounds urged at the time of the urging of the motion [136] to suppress and exclude evidence. And as to all of the defendants other than the officers and members of the crew, we particularly urge the point that no proper foundation has been laid as to them and it is not binding as to them. As to the officers and members of the crew, we urge all of the points urged in the motion to exclude evidence, and particularly that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. Your Honor will have in mind that if that is a book in the handwriting of any person not a defendant in

this case it cannot under any theory of the case be admissible in evidence.

The COURT.—It seems to be a partial log of the "Quadra" running from September 10 to October 7. Objection overruled.

Mr. CROWLEY.—May I enter the objection, if your Honor please, that it is self-serving; that there was and is no evidence showing or tending to show *prima facie* or at all, the existence of a conspiracy alleged, or of any conspiracy. And there is no evidence at all showing or tending to show that the or any of the defendants was or is connected therewith. There is no evidence furthermore, your Honor, showing any personal responsibility or familiarity of any of the defendants with the book now proposed to be offered in evidence.

Mr. FAULKNER.—And I may add to that, the Court indicating before passing on the motion that it purported to be a log, the record in the handwriting of the persons who identified the book shows that it was hidden away on a shelf on the "Quadra" and undoubtedly could not have served the purpose of a log on the "Quadra" or an official instrument of any sort.

The COURT.—It is not a regular log. It is admissible. Objection overruled.

Mr. FAULKNER.—Exception. [137]

Mr. CROWLEY.—We note an exception, your Honor.

(Rep. Tr., pp. 139, 140.)

The book was here marked U. S. Exhibit 6.

(Testimony of H. S. Creighton.)

Mr. GILLIS.—The card that is attached to Government's Exhibit No. 6, where did you find that, Mr. Creighton? A. In the same room.

Q. In the same room?

A. In the same cabinet.

(The card was then detached from the book and marked U. S. Exhibit 7 for Identification.)

Mr. GILLIS.—I desire at this time to read from this exhibit that has been offered in evidence.

Mr. FAULKNER.—The same objection to its being presented to the jury.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—(Reading.)

"S. S. Quarda

Sailed from Vancouver Wednesday, Sept. 10, 1924, 10:30 A. M. Kiltursh alongside. Straits Juan De Fuca 10:30 P. M.

Sch. Odenn alongside 11 P. M., transferred 500 Chinese W. C."

(The following appears in the margin):

"Sacking daily on all spare time from 6 A. M. until 5 P. M."

"Sept. 11th.

Anchored 1:40 A. M.

Hove away 6 A. M. and steamed out. Picked up Kiltursh and took on board 204 sacks R Beer and 380 boxes. Discharged aboard Kiltursh 2374 cases. Anchored 9 A. M.

"Sept. 12th.

Hove away 6 A. M. Picked up Kiltursh and Discharged 100 cases.

(Testimony of H. S. Creighton.)

Proceed to sea looking for"—and here is a word I cannot make out, and after it is the word "Swiftsure. Light ship 4:30 P. M."

The WITNESS.—May I suggest that it is "Comet."

Mr. GILLIS.—I don't know.

"Took departure bearing and proceeded southward.

"Sept. 16th, Tuesday. [138]

"Picked up Malahat 7:30 A. M. off P. Reyes."

On the margin of the next page: "Sacking and trimming ship continued daily from 6 A. M. until 5 P. M. No rest for a booze runner."

The COURT.—Is that a part of the log or a mere philosophical observation?

Mr. GILLIS.—I presume it was a man's feelings at that particular time, expressed in words.

"Sept. 17–18–19.

Fresh northerly winds and heavy swell. Sacking cargo. Shipping water and decks and bowspit leaking badly. Forecastle flooded.

"Sept. 20, Saturday.

C–731 alongside 2 P. M.

Completed Order 110.7. Light N. W. Wind and easy swell.

"Sept. 21.

Vis 4 Alongside. 7 A. M. Easy swell. Light N. W. breeze. Completed orders 2–3–8 3 P. M. Moored alongside Malahat 4:15 P. M. and discharged empty fuel drums. Completed 6:30 P. M. Cast off and hove to for the night.

"Sept. 22nd.

Marconi alongside A. M. with 40 barrels Bourbon from Malahut. P. M., Marconi alongside with 35 barrels bourbon. Light breeze, easy swell. Marconi Completed orders 110 12 for shore 4 o'c P. M. Steamed 4 miles to sea and Hove too for the night.

"Sept. 23.

Named alongside Malahat 8:15 A. M. Thick fog, light swell. Transferred from Malahat to Quadra 60 barrels bourbon. Cast off and hove too. Completed Orders 4–6 4 P. M. Marconi alongside and loaded 23 empty fuel barrels for Malahat. Hove too for the night. [139]

"Sept. 24.

6 A. M. began taking cargo out of abaft No. 1 hatch and stowing in the Port wing between decks and in fore peaks of lower hold to make room for Chinese Wine to be transferred from Malahat when weather permits. Fresh N. W. wind blowing, and moderate sea. No boats to-day, but a damn hard days work for deck crew and supers.

"Sept. 25.

Strong northwester blowing and heavy seas running. Cleaned out fore hold for reception of Chinese Wine. Battened down hatches and re-stowed cargo that had shifted between decks abaft and cut down to cook stores. 6 P. M. wind and sea increasing. Vessel riding comfortable. Nothing in sight.

"Sept. 26.

Picked up Malahat 10:30. Motor Boat Cali-

fornia came close aboard with stores and 15000 sacks but refused to come alongside on account of our guard rail. Heavy swell running, consequently she discharged her cargo on Malahat.

"Sept. 26, Continued.

which was later transferred to us by M. B. Marconi. 4 P. M. Marconi again alongside with 200 cases Chinese Wine from Malahat. Also M. B. Pilgrim alongside and completed order No. 15. 6 P. M. Marconi alongside with another load of 200 cases Chinese Wine from Malahat. 7:30 P. M. Completed unloading Marconi a steamed to windward for the night. Light N. W. wind out. Swell running.

"Sept. 27.

6 A. M. Calm and clear. M. B. Charles Truelson alongside. Sacking cargo to complete orders No. 13–14. Marconi alongside with 200 cases Chinese Wine. Discharged her and loading orders 13–14. Marconi again alongside with 200 cases Chinese Wine. [140] "Discharged and completed Orders 13–14. Lunch Time.

1 P. M. M. B. 3682 alongside and completed order No. 11. Also order from Malahat No. 136 for 3 barrels Bourbon. No. 70–71–72. Marconi alongside with 200 Chinese Wine. And loaded 50 empty fuel barrels transferred to Malahat. Hoisting out fuel from fore tween decks for after tanks until 2 bells. Supper. Steamed to windward for the night. Clear and calm."

(On the margin appears the following):

"Space on ship and in holds nearly filled up."

"Sunday Sept. 28.

7:30 A. M. Fresh breeze N. W. moderate swell. Marconi alongside with 99 cartons of Chinese Wine. Alongside again 1:30 P. M. with 100 cases and 49 cartons. 4:30 P. M. alongside again with 160 cases. No boats from shore. Weather raw and cold. Marconi also took off empty fuel barrels to Malahat.

"Sept. 29.

8:30. Charles Truelson alongside and completed orders 18–19–20. Lunch? Sacking continued during P. M. until 3:30. M. B. 903–B alongside and completed order 17—bourbon barrel No. 73. 5:30 P. M. steaming to windward dead slow Farallone Rock plainly visible about 15 miles to eastward.

"Sept. 30.

Completed transferring cargo from Malahat at 7:30 P. M. Malahat sailed for home. N. Wester beginning. Supercargo Rondall aboard California let go and went in.

"Oct. 1.

Heavy N. W. wind and sea. Sacking cargo.

"Oct. 2.

Heavy N. W. Wind and sea. Decks leaking badly. Sacking cargo. [141]

"Oct. 3.

Still blowing hard steaming in to N. West, dead slow sacking cargo.

"Oct. 4.

Weather the same no change heavy sea. Sack-

ing cargo very uncomfortable. Water slopping around between decks.

"Sunday, Oct. 5.

Wind hauled to S. E. and blowing a gale and raining. Doing a little washing 4 P. M. Wind dropped to light breeze. Sky heavy and cloudy.

"Oct. 6th.

Strong easterly wind. Sch Coal Harbour in sight about 10 A. M. M. B. C731 alongside. Completed Order 32–34. California alongside and completed order 21. Supercargo Randall left for shore. Transferred 232 cases Gordon Gin in boats from Coal Harbour. 7 P. M. steamed to windward and hove too for the night light N. W. breeze.

"Oct. 7.

A. M. Kiltursh alongside and unloaded 100 bbls. fuel oil. Marconi alongside and completed orders 16–27. C 808 alongside and completed orders 28. Ocean Queen alongside and completed order Mal 43 with 300 Chinese wine and B. B. 82–83–84–85–86– Light N. W. wind. Coal Harbour sailed for home."

Mr. GREEN.—Might I ask if what Mr. Gillis read is all that is contained in the book?

Mr. GILLIS.—That is all that is contained in the book, Mr. Green, with the exception of some red ink writing on the cover, which was written there by Mr. Creighton at the time he got the book; and the numbers on the pages, which was also done by him. On page 2 of the book it says:

"Vancouver, B. C. Sept. 9, 1924. S. S. Quadra. Copy of cargo list." That is a list of the cargo, [142] as it says, "Copy of cargo list." The only thing is that cargo—unless it is desirable to read it all,—that I want to call attention to is one line, where it says, "Corby's Rye, 1000; Alcohol, 10 gal. Kegs, 400. Beer from Kiltursh, Sept. 11, 1924; Sacks Rainer Beer, 204. Cases Rainer Beer, 380." With that exception that is all I can see contained in the book.

Mr. FAULKNER.—We move that everything in the book read by Mr. Gillis be stricken out and the jury instructed to disregard it on all the ground stated and upon the further ground that the reading of the record shows that it is not an official log of the steamer "Quadra"; the last look shows that it is nothing more or less, giving it its best impression, than a copy of another instrument, and that other instrument would be the best evidence of that which is contained in this.

The COURT.—You mean so far as applies to the cargo? That would necessarily be a copy of the ship's manifest?

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That may be true, but it was found in the room of one of the defendants here, the supercargo. The motion is denied.

Mr. FAULKNER.—As to the entire part, your Honor, or is it granted as to the copy of the list read?

The COURT.—Yes, I think I will grant it because the manifest would be the best evidence.

Mr. GILLIS.—Your Honor, would not that go to the weight of the evidence and the value of it rather than to what is contained here?

The COURT.—No, I think not. The copy of a ship's manifest made by a defendant who is not on trial it seems to me would not be admissible. A statement made by him in regard to what was done, if it was during the progress of the conspiracy, is, of course, [143] admissible against all. A mere copy of the document which showed the cargo of the ship would not be admissible. That part of it which purports to contain the cargo will be stricken out. As to the rest of it, the motion is denied.

Mr. FAULKNER.—Exception.

Mr. GREEN.—Your Honor, I would like to add a further ground to the motion to strike out this evidence. It is apparent from the reading of the book that everything that is set forth therein happened outside of the territorial waters of the United States.

The COURT.—You would not contend, would you, Mr. Green, that if a man were here properly charged with crime that a statement made by him in London would not be admissible against him?

Mr. GREEN.—Well, that is all right for what it is worth.

The COURT.—It is for the jury to tell what it is worth. Motion denied.

(Testimony of H. S. Creighton.)

Mr. GREEN.—I think, your Honor, that is a question of law.

The COURT.—I deny the motion.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 141–147.)

WITNESS.—(Continuing.) I recognize the picture you ask me to examine. They were taken under my direction and supervision. They are photographs of the "Quadra" and different parts of the "Quadra" as they existed on the day the pictures were taken. These photographs correctly depict the ship and cargo as it was at that time. The cargo was in the same condition as it was when it was brought in by Captain Howell.

Mr. GILLIS.—I ask that these pictures be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—The same general objection that we have had running throughout the trial.

Mr. FAULKNER.—The same objection on behalf of all of the defendants, jointly and severally. [144]

Mr. GREEN.—Particularly the objection on behalf of the officers and the captain and the crew of the "Quadra" on all of the grounds stated in the motion to exclude evidence.

Mr. FAULKNER.—I might indicate further that the pictures taken show that they do not conform to the foundation laid by Mr. Creighton and do not represent the condition of the cargo at the time of seizure.

(Testimony of H. S. Creighton.)

The COURT.—They show what was in the boat. Overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—Exception.

(Rep. Tr., pp. 148, 149.)

Whereupon the photographs were received in evidence and marked U. S. Exhibits 8 to 15 inclusive.

WITNESS.—(Continuing.) I have here some small slips of paper that were found in the captain's room on the "Quadra" on October 15, 19[illegible].

Mr. GILLIS.—I offer these six slips of paper in evidence, may it please the Court, and ask that it be marked Government's exhibit next in order.

Mr. CROWLEY.—The same objection.

Mr. FAULKNER.—The same objection on behalf of the defendants jointly and severally, and the further objection that the pictures were found three days postdating the seizure and the arrest of the defendants, and during a period of time on which the vessel was in the control of people other than the defendants; the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 149.)

Whereupon said documents were received in evidence and marked U. S. Exhibits 16. [145]

Mr. Gillis read from Exhibit 16 as follows: "September 27, 1924, 3/200 2/200 1 boat 200 cases Chinese wine transferred from 'Malahat' to 'Quadra.' G. F.

400 cases Chinese wine transferred from 'Malahat' to 'Quadra.' September 26, 1924, G. F.
From 'Malahat' 40 barrels boat Bourbon transferred to 'Quadra' September 22, No. 168 to 207. G. Ford. September 23, 1924, 61 barrels bulk bourbon transferred to 'Quadra' from 'Malahat,' 132, 82, 78, 70, 39. George Ford.
35 barrels of bourbon transferred from 'Malahat' to 'Quadra' September 22, No. 133 to 167. George Ford.
Transferred from 'Malahat' September 28 1/100 cartons Chinese wines, 48 3/12 cartons Chinese wines, 2/100 cases Chinese wines, 3/160 cases Chinese wines." [146]

Mr. GREEN.—I move to strike out the exhibit just offered by the Government on all of the grounds urged in the motion to exclude evidence heretofore made, and on the further ground that it is apparent from the reading of this exhibit that they are not evidence of any violation of any law of the United States; a transfer of liquor on the high seas; and there is no showing to the contrary, from one foreign vessel to another vessel, it is certainly not a violation of any law of the United States.

The COURT.—No, not of itself, but I cannot anticipate what the evidence will be; of course, if there is no evidence here that this vessel was lying out there for the purpose of landing liquor on our shore, that would be true; but this is only one step of the evidence, and it may develop that there was some landing. I deny the motion.

Mr. GREEN.—Exception.

Mr. CROWLEY.—Exception.

(Rep. Tr., p. 150.)

(Rep. Tr., pp. 138–152, inclusive.)

TESTIMONY OF S. H. SACKETT, FOR THE UNITED STATES.

S. H. SACKETT, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is S. H. Sackett, and I am an inspector of U. S. Customs, detailed as a lieutenant of inspectors at the port of San Francisco.

I recognize the book shown me and marked "Mate's Log-book." I got this book from the steamer "Quadra" on October 14, 1924, from the officers' quarters on board the "Quadra."

Mr. GILLIS.—I ask that it be introduced in evidence and [147] marked Government's exhibit next in order.

Mr. FAULKNER.—The same objection to it that was made to the introduction of similar exhibits taken from the "Quadra" and on the further ground that the instrument in question was illegally seized from the possession of the defendants, officers and members of the crew of the "Quadra" at a point beyond the territorial jurisdiction.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 153.)

(Testimony of S. H. Sackett.)

Whereupon said book was introduced in evidence and marked U. S. Exhibit No. 17.

WITNESS.—(Continuing.) I recognize the instrument marked "Certificate of British Registry" and received the same from the steamship "Quadra" on October 14, 1924, in the officers' quarters.

Whereupon the said document was received in evidence and marked U. S. Exhibit No. 18.

Mr. GILLIS.—In the exhibit that has been just introduced in evidence, No. 18, I desire to call attention of the Court and jury to the portion on the inside, the last notation made, "George Ford whose C. O. C. is No. 6923, is now master. A. E. Johansen, District Registrar."

On the other side, "I hereby certify that the Canadian Mexican Shipping Company Limited, of the City of Vancouver, British Columbia, is the sole registered owner of 64/64 shares in the within-described vessel. Custom House, Vancouver, B. C., 5th September, 1924. George A. Adams, For Registrar."

(Rep. Tr., p. 155.) [148]

WITNESS.—(Continuing.) I recognize the instrument marked "Agreement of Articles" and "Account of Crew." I first saw them in the hands of Captain Ford on the "Quadra" on October 13th. They were later delivered to us. I had a conversation with him with reference to them.

Mr. CROWLEY.—Just a moment, we object to that on all of the grounds heretofore stated in the

(Testimony of S. H. Sackett.)

general objection that we have running to all of this evidence.

The COURT.—Overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 157)

WITNESS.—(Continuing.) He told me that it was the official crew list of the ship and that he wanted to take it up to the British Consul here, so at that time I left it in his possession. It is the ship's copy of the shipping articles.

Mr. GILLIS.—I ask now that it be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—We object to it on the grounds heretofore stated.

Mr. GREEN.—I object to it on behalf of the captain and officers and crew of the "Quadra," particularly on all of the grounds stated heretofore in the motion to exclude evidence on file here.

The COURT.—It is a form of ship's articles prescribed by the statute of the Dominion. Overruled.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 157, 158.)

(Rep. Tr., pp. 152–158, inclusive.) [149]

TESTIMONY OF JOHN TOLAND, FOR THE UNITED STATES.

JOHN TOLAND, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is John Toland, and I am a clerk in

(Testimony of John Toland.)

the Customs service in charge of the Appraisers Stores and as such have charge of the cargo of the steamship "Quadra." I did not have charge of the unloading at the docks. The cargo was delivered to me at the Appraisers Stores and is now in the Appraisers Stores.

I also had and have charge of the cargo of the "C–55" and the same is now in my custody. I did not myself see any of the cargo taken off the "Quadra" or the "C–55" and do not know whether the liquor that I now have in my possession came from either of those vessels of my own knowledge except from the fact that the tickets that accompanied it say that it came from those vessels. It was unloaded by inspectors at the waterfront and hauled to the Appraisers Stores by the Overland Freight & Transfer Company. Each load was accompanied to the Appraisers Stores by a Customs officer and delivered to me.

Mr. GILLIS.—Q. I hand you now and ask you to examine the card marked "Seizure 27633" and ask you do you recognize that? A. Yes.

Q. What does the sack contain, if you know?

Mr. CROWLEY.—We object to it on all the grounds heretofore stated, and each and all of the grounds.

Mr. O'CONNOR.—It is objected to, may it please the Court, on behalf of the defendants McKenzie and Pensotti as immaterial, irrelevant and incompetent, and upon the further ground that no proper foundation has been laid.

(Testimony of John Toland.)

The COURT.—Objection overruled. [150]

Mr. O'CONNOR.—Exception.

Mr. FAULKNER.—And the objection on behalf of the remaining defendants is on the same ground and on the additional ground it calls for the opinion of the witness, and that the bag and contents are the best evidence of the fact.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Corby's Whiskey.

Mr. GILLIS.—Q. Where was this sack taken from, that is, what boat did this sack come from?

Mr. FAULKNER.—We object to that on all the grounds heretofore stated, and particularly on behalf of the officers and members of the crew on the ground that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution, and that the seizure of the "Quadra" occurred beyond the territorial jurisdiction of the United States.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., 160, 161.)

A. "C-55."

Whereupon said exhibit was marked U. S. Exhibit No. 20 for Identification.

Mr. GILLIS.—I ask that it be offered in evidence now.

Mr. FAULKNER.—We renew our objection on the ground that the proper foundation has not been

(Testimony of John Toland.)

laid; there is nothing in the record to show that this liquor was taken from the "Quadra."

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 162.)

Whereupon it was stipulated by and between counsel that Exhibit No. 2 for Identification contained alcohol in excess of one-half of one per cent by volume and that it was fit for beverage purposes. [151]

Thereupon said Exhibit 20 for Identification was admitted in evidence and numbered U. S. Exhibit No. 20.

WITNESS.—(Continuing.) Sack No. 27639 I recognize as the sack which with its contents came from the "Quadra". and contains Corby whiskey, which is a Canadian rye whiskey. I did not see this liquor taken from the "Quadra" and I am merely testifying that it was liquor delivered to me as coming from the "Quadra" and stored in the Government warehouse.

Whereupon, without waiving any of the objections heretofore urged on behalf of the defendants as to the admissibility of the exhibit in evidence, it was stipulated that said exhibit contained more than one-half of one per cent of alcohol by volume and was fit for beverage purposes.

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 21.

Mr. GILLIS.—At this time I desire to call attention of the Court and Jury to the sack of Corby

(Testimony of John Toland.)

Whiskey just introduced in evidence, taken from the Steamer "Quadra" with the word "Corby" written on the sack.

WITNESS.—(Continuing.) I recognize this keg as one of the kegs that came from the "Quadra."

Whereupon it was stipulated by and between counsel that said keg contained more than one-half of one per cent of alcohol by volume and was fit for beverage purposes, such stipulation being subject to the objections heretofore made to the introduction of the exhibit in evidence.

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 22.

Mr. GILLIS.—I now desire to call the attention of the Court and the jury to the marking on the end of this barrel, which says: "Alcohol, 65 O. P. Consolidated Distilleries Limited Cor." and then the words are blotted out on the other end, and then the word "Ontario." [152]

Cross-examination by Mr. GREEN.

This cargo has been in my custody since the 16th day of October, 1924, and it is intact. I did not check it over with the manifest from the ship, but checked it as it came to me into the storehouse, and it is still in the same condition as it was when I received it.

Redirect Examination by Mr. GILLIS.

Mr. GILLIS.—Q. Have you a list of the articles that were taken from these two boats, the "C-55" and the "Quadra"?

(Testimony of John Toland.)

A. No, I just have the list of the "Quadra."

Q. What was taken from the "Quadra"?

A. There were 7569 cases of whiskey, gin, beer, champagne, vermuth, cordial and chinese wine. 1873 bags of whiskey, gin, beer, champagne, vermuth, cordial and Chinese wine. 194 kegs alcohol. 129 barrels of whiskey. 104 cartons of Chinese wine.

Mr. GREEN.—Might the answer go out, if the Court please, for an objection?

The COURT.—You may make your objection and let it stand before the answer.

Mr. GREEN.—I object to the question on the ground that it is hearsay, and on all the grounds heretofore urged in the motion to exclude evidence made on behalf of my clients.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

(Rep. Tr., p. 168.)

WITNESS.—(Continuing.) The tag that was attached to the liquor taken from the "C–55" shows the amount of liquor seized off that boat, which was 89 sacks of wine, I believe, and one case of beer, broken.

(Rep. Tr., pp. 158–169, incl.) [153]

TESTIMONY OF PETER SARTES, FOR THE UNITED STATES.

PETER SARTES, a witness called on behalf of the United States, being first duly sworn, testified as follows:

(Testimony of Peter Sartes.)

My name is Peter Sartes and I am a member of the coast guard, with rank of chief boatswain's mate and officer in charge of the U. S. coast guard "Swift," and was such on the 11th day of October, 1924, at which time I was between Lime Point and Alcatraz Island. On that day, about 7:30 o'clock at night, I saw the motor-boat "903-B" between Lime Point and Alcatraz Island, about half a mile away from me when I saw it. The "903-B" had its lights on and I headed my vessel for it and caught up with her and put alongside of her.

Mr. CROWLEY.—Just a minute. The same objection that we have been making all along, your Honor.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—That is on behalf of all of the defendants?

The COURT.—Yes.

(Rep. Tr., p. 170.)

WITNESS.—(Continuing.) I ran alongside and I turned my searchlight on her and searched her; and at the forward hatch there were some barrels of alcohol. I gave my signal to this boat to stop by blowing my whistle a couple of times and they stopped. Jack Allen and Carl Nielsen were aboard this boat. The barrels that I found were down in the hold. There was nothing on the deck.

The writing that I saw on the barrels in the "903-B" looks the same as the writing that appears at the end of the barrel marked Government's Ex-

(Testimony of Peter Sartes.)

hibit No. 22. I do not know what the writing was at the end of the barrel. I merely know that it [154] contained alcohol. I saw some sacks in the after hold of the "903–B," but I did not notice any of the markings on the sacks. I also saw a few cases marked "Scotch Whiskey."

I took the "903–B" to Meiggs Wharf and turned it over to the Customs House and called up the police and had them arrest the two people that were aboard. I do not know whether I could recognize the men that were aboard or not. It was pretty dark that night and they were all dirty.

Cross-examination by Mr. HENNESSY.

The two men we found aboard the "903–B" look like those two fellows there. It was about 7:30 in the evening that the "903–B" was seized and it was dark. When I first saw the "903–B" it was between Lime Point Lighthouse and Alcatraz Island in the bay of San Francisco. I was on the San Francisco side of the bay at that time. None of the liquor that was on the "903–B" was visible nor was any of it above deck. The "903–B" is about 45 feet long and 9 feet abeam.

(Rep. Tr., pp. 170–174, incl.)

TESTIMONY OF JOHN TOLAND, FOR THE UNITED STATES (RECALLED).

JOHN TOLAND, a witness recalled for the United States, testified as follows:

I have examined the barrel marked "Seizure No. 27643." Said barrel was seized and taken from the

(Testimony of John Toland.)

"903–B." I first saw this barrel when it was taken to the Appraisers' Stores, but I never saw it on the "903–B," and of my own knowledge I do not know whether the barrel came from the "903–B" or not except from the ticket that came with it. [155]

Mr. HENNESSY.—We object to the testimony of this witness, Judge, on the ground that it is hearsay, and we move to strike it out.

The COURT.—The "903–B" was the one that Mr. Sortes testified to?

Mr. GILLIS.—Yes, your Honor.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Exception.

(Rep. Tr., p. 175.)

Whereupon it was stipulated between counsel that said barrel contained alcohol in excess of one-half of one per cent by volume, or 94% alcohol by volume.

Mr. GILLIS.—Yes, I am offering it in evidence.

Mr. HENNESSY.—I desire to object to it on the ground that it is immaterial, irrelevant and incompetent, it has not been identified as coming from the "903–B," and, furthermore, it was seized as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—We supplement that objection upon the ground that it is not binding on the officers and members of the crew, because there is no showing in the record that it was transferred—even giving it the worst construction—at a point

where the transfer was legal. Also the general objections heretofore made.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 175, 176.)

Whereupon said exhibit was introduced in evidence and marked Government's Exhibit No. 23.

Mr. GILLIS.—I desire to call the attention of the Court and the jury to the marking on the end of the barrel, marked, "Alcohol, 65 O. P. Consolidated Distilleries, Ltd., Corbyville, Ontario." [156]

WITNESS.—(Continuing.) I have examined the case with the number on it, "355, Seizure No. 27643." This case came from the "903–B." It was delivered to me at the Appraisers Stores on October 13th. I do not know of my own knowledge whether it came from the "903–B" or not except for the ticket that accompanied it.

Whereupon it was stipulated that said exhibit contained more than one-half of one per cent of alcohol in volume and fit for beverage purposes.

Mr. HENNESSY.—Are you introducing it, Mr. Gillis? I will stipulate to the alcoholic content if you wish.

Mr. GILLIS.—Yes, that is all I ask you to stipulate to.

Mr. HENNESSY.—I object to it, Judge, upon the ground that it is immaterial, irrelevant and incompetent, no evidence to establish that it came from the "903–B," and, further, that it was seized

(Testimony of W. W. Hussey.)

as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—The same objection on behalf of the remaining defendants, and an exception.

(Rep. Tr., pp. 176, 177.)

Thereupon said exhibit was received in evidence and marked U. S. Exhibit No. 24.

Mr. GILLIS.—I desire at this time to call the attention of the Court and Jury to the marks on the side of the box, "Bols," on the end "Bols" "Dry Gin, Product of Holland," and on the other end "Consolidated Exporters Corporation, Ltd., Vancouver." That is all.

(Rep. Tr., p. 177.)

(Rep. Tr., pp. 174–177, incl.) [157]

TESTIMONY OF W. H. HUSSEY, FOR THE UNITED STATES.

W. H. HUSSEY, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is W. W. Hussey and I am a sales manager of the Bemis Bag Co. and have been such for the last year and four months. In September of 1924 I met Mr. J. Lloyd.

Mr. GILLIS.—Q. Did you make any sale to him of burlap bags?

Mr. FAULKNER.—Objected to on the ground, if your Honor please, that it is immaterial, ir-

(Testimony of W. W. Hussey.)

relevant and incompetent, and not binding upon any of the other defendants, and not within the issues of the case, and the proper foundation has not been laid for its introduction in evidence.

The COURT.—Is Mr. Lloyd a defendant?

Mr. GILLIS.—Mr. Lloyd is a defendant.

Mr. O'CONNOR.—He is not on trial.

Mr. GILLIS.—He is not on trial, but he is a defendant in this action.

The COURT.—I presume that you intend to connect this up.

Mr. GILLIS.—I do.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. O'CONNOR.—Exception.

Mr. CROWLEY.—Exception.

Mr. GILLIS.—Q. Did you make a sale to him on September 17, 1924? A. Yes, 13,000 bags.

Q. I show you an instrument and ask you what that is, Mr. Hussey?

A. That is the original order I wrote when he gave me the order.

Q. When who gave you the order?

A. Mr. Lloyd.

Q. And the order is for what?

A. 15,000 burlap bags. [158]

Q. Does it show on there the size of the bags?

A. Yes.

Q. What size are they?

A. 12,000 19½ to 27½, 3,000 17½ to 31.

Mr. GREEN.—Objected to, if your Honor please,

(Testimony of W. W. Hussey.)

as not being in the handwriting of the defendant charged, there is no proper identification of the person this order was sold to, as being one of the defendants in this case; the sale is really to the Lloyd Pacific Co., which has not been identified as being connected with any defendant in this case.

The COURT.—I presume that it will be connected up. Of course, if it is not, it will by no possibility do anybody any harm. Overruled.

Mr. GREEN.—Exception.

Mr. FAULKNER.—If the Court please, the instrument does not even purport to have been sold to a defendant in this case.

The COURT.—But the witness testified what he did; he sold it to *Hin.* Lloyd.

Mr. FAULKNER.—If that is a fact, then this instrument is of no value.

The COURT.—What is it, Lloyd Pacific Co.?

Mr. GILLIS.—It is Lloyd Pacific Co.

The COURT.—Is this a regular bill shipped in the regular course of business for that sale to Lloyd?

A. Absolutely, yes.

The COURT.—It will be admitted.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 177–179.)

Whereupon said exhibit was received in evidence and marked U. S. Exhibit No. 25.

WITNESS.—(Continuing.) I recognize the tag you show me, No. 2730, which is the delivery tag

(Testimony of W. W. Hussey.)

from the shipping department of our company for [159] 30 bales of bags, 500 bags to a bale.

Mr. GILLIS.—I ask that that be introduced and marked Government's Exhibit next in order.

Mr. CROWLEY.—Same objection.

The COURT.—That covers the bags included in this order? A. Yes.

Mr. GILLIS.—The same order number appears in each one?

A. I did not look at that, Mr. Gillis. I think it does.

Mr. FAULKNER.—The same objection, with the further objection that it shows it was not received by the party to whom the claim is made that the instrument was sold, and it could only be binding on the person whose name is subscribed to it, the one into whose possession they came.

The COURT.—Who is he?

Mr. GILLIS.—J. S. and some name beginning with "B."

Mr. FAULKNER.—Who he represents is not indicated there.

The COURT.—Q. At any rate, these were the bags which were sold to Mr. Lloyd, were they?

A. Yes.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 179, 180.)

Whereupon said exhibit was received in evidence and marked U. S. Exhibit No. 26.

(Testimony of W. W. Hussey.)

WITNESS.—(Continuing.) With reference to Government's Exhibits 25 and 26, the number "2730" in the right-hand corner of each of these exhibits is the order number of the Bemis Bag Co. for that particular sale. The other small tag that you show me is the identification tag that comes from the factory to the shipping department, and the number stamped thereon, "2730," is the number by which the shipping clerk identifies the bale, and the mark of the Bemis Bag Co. is stamped on the [160] lower right-hand corner of the tag.

Whereupon said tag was marked U. S. Exhibit 27 for Identification.

(Rep. Tr., pp. 177–181, incl.)

TESTIMONY OF C. F. HOWELL, FOR THE UNITED STATES (RECALLED—CROSS-EXAMINATION).

C. F. HOWELL, a witness on behalf of the United States, recalled for further cross-examination, testified as follows:

Since I was on the witness-stand yesterday, I have ascertained the pitch of the propeller of the "Shawnee" and it is 11.7 feet. By that I mean that without resistance one turn of the propeller would tend to advance the vessel 11.7 feet. The pitch of the propeller minus the slip would not necessarily be the speed of the vessel. That would depend upon various elements. You usually account for any loss in difference between your calculated and your actual travel by accepting a larger or a smaller

(Testimony of C. F. Howell.)

degree of slip than is the standard. I would not say that the accepted formula for figuring the speed of a vessel from the revolutions would be the pitch of the propeller, times the revolutions, times 60, divided by 6080, which is the number of feet in a knot, minus the slip; that is not the accepted way of arriving at the speed of the vessel from the revolutions of the propeller. The accepted way is to take the vessel over a measured course, run her back and forward several times to get an average of the tide and water and current conditions, carefully check the elapsed time required to cover a measured mile, with the constant speed of your propeller, and the result will tell you the number of revolutions of the engine necessary to make a mile under the conditions that obtain at the time you ran the standardization. [161] I do not mean to convey that the formula that has been read to me is not the accepted one. My idea is to tell you the way the speed of the "Shawnee" is standardized, that is, by running her over a measured mile. I do not know whether the formula that you have suggested to me is the standard or accepted formula general among seafaring men. I would not say that it is not the standard.

(Rep. Tr., pp. 182–184, incl.)

TESTIMONY OF W. S. MORSE, FOR THE UNITED STATES (RECALLED).

W. S. MORSE, a witness on behalf of the United States, recalled for further cross-examination, testified as follows:

(Testimony of W. S. Morse.)

When the "Shawnee" approached the starboard side of the "Quadra" and rounded the "Quadra's" stern and approached on the port side of the "Quadra," I was on the flying bridge of the "Shawnee" at the peloruses. There are two peloruses on the "Shawnee" and they are on opposite sides of the flying bridge. At that time I was at the one on the port side. I at that time would be standing inboard and forward of the port pelorus, in order to take a bearing of Point Reyes. By the flying bridge I mean the top of the pilot house, and there are two peloruses and a binnacle there. The forward mast, or the foremast, comes up right forward of the wheel-house, and attached to the forward mast, just about on a level with the top of the wheel-house, is a searchlight which I imagine is about 36 inches in diameter, or perhaps 30.

I entered the coast guard service last August, and before that time I was with Libby, McNeill & Libby, and previous to that I was an officer in the United States navy for five years, with the rank of lieutenant. I am not a graduate of the Naval [162] Academy, but I took the war course there and graduated from the New York Nautical School in 1907.

(Rep. Tr., pp. 184, 185.)

TESTIMONY OF J. J. PARKER, FOR THE UNITED STATES.

J. J. PARKER, called on behalf of the United States, being first duly sworn, testified as follows:

My name is J. J. Parker, and I am the traffic manager of Bemis Bros. Bag Co., San Francisco. I do not know a man by the name of Lloyd personally. I received a communication with reference to order 2730, shown here on Government's Exhibit 26 on September 25, 1924.

Q. What were those instructions that you received?

Mr. FAULKNER.—I object to that on the ground that it is immaterial, irrelevant and incompetent, not binding on any of the defendants, and a transaction had or intended to be had with some person not before the Court, and not binding upon any defendant in this case, and the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 185, 186.)

A. To deliver 15,000 bags that we had on hand between Pier 18 and 20 and have the teamster see Captain Sam. I know that the 15,000 bags called for by order 2730 left the Bemis Bag Co. on that day.

(Rep. Tr., pp. 185–187, incl.)

TESTIMONY OF CHARLES STEWART, FOR THE UNITED STATES.

CHARLES STEWART, a witness called on behalf of the United States, being first duly sworn, testified as follows: [163]

My name is Charles Stewart, and I am a teamster employed by the Overland Freight & Transfer Co. and was such on September 25, 1924. I received on that day from the Bemis Bag Co. the bags called for in the order Government's Exhibit No. 26. There were 30 bales of bags.

Q. Where did you take those bags?

Mr. FAULKNER.—The same objection, if your Honor please.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. To pier 22.

(Rep. Tr., p. 188.)

WITNESS.—(Continuing.) I delivered them to the gentleman that signed the receipt and they went on the "California." The motor-boat was there and the person who signed the receipt came from the motor-boat "California."

(Rep. Tr., pp. 187, 188.)

TESTIMONY OF E. E. ENLOW, FOR THE UNITED STATES.

E. E. ENLOW, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is E. E. Enlow and I am a Special

(Testimony of E. E. Enlow.)

Agent of the Treasury Department of the Government and have been such for five or six years. On the 13th, 14th or 15th days of October I had occasion to visit the steamer "Quadra" in San Francisco Bay. I recognize the tag marked Government's Exhibit 27 for Identification. Mr. Creighton gave me that tag, but I did not receive the tag when it was originally gotten.

(Rep. Tr., pp. 188, 188½.) [164]

TESTIMONY OF GEORGE B. RICHARDSON, FOR THE UNITED STATES.

GEORGE B. RICHARDSON, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is George B. Richardson and my position with the Government is an inspector of customs. On the 23d day of October, 1924, I visited the steamer "Quadra." I have seen Government's Exhibit No. 27 for Identification. I took that tag from a bale of sacks that I found in the forward hold of the steamer "Quadra."

Mr. GILLIS.—I now offer, ask that Government's Exhibit No. 27 for Identification be introduced in evidence.

Mr. FAULKNER.—We object to the introduction of the tag in evidence, if the Court please, as to the officers and members of the crew of the "Quadra" on the ground that it is the result of an illegal seizure. The point of the objection is more

(Testimony of George B. Richardson.)

fully covered by the motion to exclude evidence heretofore presented to your Honor. On behalf of the remaining defendants it is objected to on the ground that it is immaterial, irrelevant and incompetent and hearsay and the proper foundation has not been laid, and also as self-serving.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 189.)

Whereupon said tag Government's Exhibit No. 27 for Identification was received in evidence and marked U. S. Exhibit No. 27.

(Rep. Tr., p. 189.)

TESTIMONY OF PAUL J. DOYLE, FOR THE UNITED STATES.

PAUL J. DOYLE, a witness on behalf of the United States, first being duly sworn, testified as follows:

My name is Paul J. Doyle and I am with the Customs Service, and was present when the cargo of the "903–B" was unloaded after the seizure. We have a U. S. Customs wagon, owned by the Government, to transport all packages in charge of customs officer. There were 62 ten-gallon kegs of alcohol.

(Whereupon it was stipulated by and between counsel that the [165] barrels of alcohol that were pointed out to the jury by Mr. Toland as coming from the "903–B," were the same barrels of alcohol that this witness identified were moved

(Testimony of Paul J. Doyle.)

to the customs-house. It was further stipulated that 28 sacks of Scotch whiskey and 10 cases of Bols gin were taken from the "903–B" and delivered to the customs-house.)

On the 15th day of October I was on board the "Quadra," that is, after the seizure. I saw the same type of liquor on the "Quadra" that I saw on the "903–B," that is the marks, type and stencils were the same in appearance. I accompanied the last load from the "903–B" to the Appraisers Building with Inspector Smith.

Cross-examination by Mr. GREEN.

When I saw the "903–B" she was tied up at Meiggs Wharf. Mr. Smith and myself rode in his car following the customs truck, and Mr. Toland was on the platform and signed personally for that particular load of liquor. The cases of Bols gin that I saw on the "903–B" and those that I saw on the "Quadra" have no designating marks other than the marks placed upon the boxes by the manufacturer, but the barrels did. I do not claim that all the Bols gin in San Francisco came from the "Quadra," but when coupled with the presence of alcohol on the "Quadra," I do claim that this Bols gin being in the same boat, came from the "Quadra." This boat came in, was taken, its load was left intact, it was brought alongside, and if I am not right to the hour it was the next day that it was sealed by the Customs Officer under regular government seals across the hatches, and nothing

(Testimony of Paul J. Doyle.)

was done to the load until I went down with Captain Head, Inspectors Richardson and Smith and a couple of guards, and we then stripped the seals off and began unloading. The boat was probably in at the dock over night before we began.

I would say that 62 boxes and sacks and barrels were [166] unloaded. I have no recollection of the number accurately, except by reference to the receipts and checks.

We unloaded the "C–55" just prior to that and ran the truck all afternoon. The similarity between the barrels of liquor found on the "903–B" and those on the "Quadra" was that they were marked "J. D. & Co., San Salvador"—"La Libertad, San Salvador." This marking was stenciled with a regular stencil and was on all of the barrels that I noticed, but I didn't see it on anything else. On the other end of the barrel and on the top of the barrel these marks occurred and each one had a cargo piece marked serially from, say, 100 to 500, running in numerical serial to identify individual pieces of the cargo. On the other side was "Consolidated Distilleries Company of Corbyville, Ontario," I believe, but I am not sure on that point.

I also unloaded the "C–55" in the same manner. I unloaded sacks from the "C–55," a number of which were marked "Corby" with the stenciling brush. I saw similar sacks on the "Quadra." The two markings on the barrels taken from the "903–B" and those on the "Quadra" agreed, that

(Testimony of Paul J. Doyle.)

is, they contained "J. D. & Co., La Lib., San Salvador, Barrel No. 224," with the gross, tare and net, and burned brands appeared on most of the barrels. The burned brand was "E X P N." The sacks that you show me are the same sacks that I saw on the "C–55" and the "Quadra."

(Rep. Tr., pp. 190–196, incl.)

TESTIMONY OF E. J. SMITH, FOR THE UNITED STATES.

E. J. SMITH, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is E. J. Smith and I am an inspector of customs. I was present on the occasion, with Mr. Doyle, when the [167] "C–55" and the "903–B" were unloaded, and I personally accompanied the cargo to the appraisers building. I followed the customs truck in my automobile.

(Rep. Tr., pp. 196, 197.)

TESTIMONY OF E. MAGRUDER, FOR THE UNITED STATES.

E. MAGRUDER, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Edward Magruder and I reside in San Francisco at present. I am not charged in this indictment, but am willing to tell the Court and jury what I know about this particular case.

Mr. RIORDAN.—Q. Has any Government officer promised you anything for your testimony in this case?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent, no proper foundation laid, until the record shows whether the defendant or the witness on trial is charged with a criminal offense.

The COURT.—The rule goes much farther than that; the rule goes to any testimony that would tend to convict him of a felony, even though no charge has been brought; and, furthermore, it goes to the question as to whether or not he is testifying under a promise of reward, or under duress. The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 198.)

No Government official has promised me anything for my testimony in this case, nor has any Government officer threatened me in any manner.

Mr. RIORDAN.—Q. Have you ever visited the steamer "Quadra"?

The COURT.—Just a moment, Mr. Magruder, I want to instruct [168] you at this time that it is your constitutional right to refuse to testify to anything which will tend in any manner to incriminate you, yourself, and that if the testimony you are about to give shall tend in any way to involve you in this transaction, or any illegal transaction, which might result in your own arrest—that you

(Testimony of E. Magruder.)

have the constitutional right to decline to testify to it if you so desire. Do you understand that?

A. Yes.

Q. Now, with the knowledge that that is so, are you willing to testify? A. Yes.

Mr. FAULKNER.—I now move that all of the responses to your Honor's questions and Mr. Riordan's questions be stricken out on the ground that they are self-serving, and incompetent for that reason.

The COURT.—The motion is denied.

Mr. FAULKNER.—Exception.

Mr. GREEN.—Might I ask the witness two or three questions before he starts to testify?

The COURT.—No, you can question him on cross-examination.

Mr. GREEN.—It goes to his state of mind.

The COURT.—I have done so. You have no right, whatever, to object, Mr. Green. The privilege of a man to decline to testify on the ground that it would tend to incriminate him is a personal privilege for him, and is one that does not concern any other human being. The request is denied.

Mr. GREEN.—How about the coercion, that is different.

The COURT.—Go ahead, Mr. Riordan.

Mr. GREEN.—Exception. If your Honor please, I offer at this time to show by the witness himself that he is under the coercion of the customs authorities.

(Testimony of E. Magruder.)

The COURT.—You may do that on cross-examination. [169]

Mr. GREEN.—Exception.

Mr. RIORDAN.—Read the question.

(Rep. Tr., pp. 199, 200.)

I have visited the steamer "Quadra," and the first time I visited it was about the 20th or 23d or 24th of September, 1924. I went to the "Quadra" by means of a power-boat, the "Viz 4." With me at that time was an engineer named Glance, and there was another man whose name I think is Ross.

Q. Now, were you going to the "Quadra" for any particular purpose?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—And, further, it is not within the issues of this case, that it is not a boat claimed in the indictment to have been used for the purpose of consummating any conspiracy charged.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 201.)

I was going to the "Quadra" for a particular purpose, that is to get a cargo of liquor. I made no arrangements with anybody before going out there for this cargo, but I had been sent by somebody else to get the liquor.

Mr. RIORDAN.—Q. Who? A. Sam Terry.

Mr. FAULKNER.—I move to strike that out as not binding on any defendant in this case, the person claimed to have sent this man to the

"Quadra" is neither a defendant nor a party interested in the proceeding, and any transaction between this witness and Mr. Terry is purely hearsay and not binding on any of the defendants.

The COURT.—It is perfectly apparent that there are two [170] answers to your objection; first is concerning the question as to whether or not this vessel was hovering on our shore for the purpose of delivering liquor here, as bearing upon the legal question, and the second is that it is elementary in the law of conspiracy that a conspiracy may be with others not named. So the objection is overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—Q. Had you had any prior arrangement about landing liquor from boats similar to the "Quadra" prior to this mission?

Mr. FAULKNER.—The same objection, and the further objection that it is immaterial, irrelevant and incompetent if this man landed liquor from any number of boats other than the "Quadra."

Mr. RIORDAN.—I think I can show his connection, if I am given an opportunity.

Mr. GILLIS.—I do not understand that we are confined in this conspiracy to the "Quadra" alone.

Mr. FAULKNER.—Read the indictment.

Mr. GILLIS.—That is simply one of the overt acts.

Mr. FAULKNER.—There is no other overt act alleged in the indictment, except overt acts founded on transactions with the "Quadra."

The COURT.—Basing the ruling on various decisions of the United States Courts of Appeal throughout the country, I held in the case of this very man Terry, whose name is exceedingly familiar to me, and I think he was out on bail from a conviction in this court—I held in his very case that it was competent on a charge of conspiracy to land liquor to show other instances as bearing upon the general scheme or purpose. I founded that ruling upon a decision of the House of Lords, upon several decisions of the Courts of Appeal [171] of the various circuits, and a decision of the Supreme Court of California, People vs. Gray, and the reasoning of Prof. Wigmore in his chapter upon the subject, and, curiously enough, the reasoning adopted by the House of Lords, the Courts of Appeal, and the Supreme Court of California was identically the same, although, in no one of the cases, did they refer to or seemingly have knowledge of the others. It seems to me perfectly apparent that in view of those authorities, and from the point of view of reason, that where men are charged with conspiracy to do a particular act, that it is a question, necessarily, of general or common design. In the case in the House of Lords, for instance, a man was charged with illegal operations; it was claimed that the operation was legal, and the Crown was permitted to show that he had performed other illegal operations.

Mr. FAULKNER.—Might I interrupt right there, if this witness was a defendant in that pro-

(Testimony of E. Magruder.)

ceeding it would be competent to show that he was engaged in rum running with other vessels.

The COURT.—What difference does that make?

Mr. FAULKNER.—What difference does it make if a man who is not a party to this proceeding was a rum runner to other boats?

The COURT.—I assume that his landing was in connection with some defendant here.

Mr. FAULKNER.—The Court has to assume it from something not in the record.

Mr. RIORDAN.—It takes time to connect this up.

The COURT.—I will overrule the objection. If it is not connected up, it will be stricken.

Mr. GREEN.—I respectfully assign the Court's remarks regarding the prior conviction and being on bail at the present time of Sam Terry as prejudicial, and ask that the jury be instructed to disregard them. [172]

The COURT.—Yes, you are correct about that. You will disregard that, Gentlemen of the jury.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Yes.

Q. What other boat prior to the "Quadra"?

A. The "Malahat."

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 202-204.)

I had connection with the "Malahat" about a

(Testimony of E. Magruder.)

week or ten days prior to my first trip to the "Quadra." I made one trip to the "Malahat." I got to the "Malahat" by means of a gas power-boat, the "Viz 4." The "Malahat" was lying about 21 miles southwest of Point Reyes.

Q. What did you do when you got there?

Mr. FAULKNER.—The same objection, and the further objection, if your Honor please, that the witness has indicated a point where any transfer of liquor to him was legal, as far as the "Malahat" was concerned.

The COURT.—Of course, I do not agree with you at all. The objection is overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 205.)

I took the 650 cases of liquor from the "Malahat" in sacks and landed them at Russian Gulch, which is about 1½ miles the other side of Mendocino City.

Mr. RIORDAN.—Q. What was your interest in landing that? Did you get anything for it?

Mr. FAULKNER.—The same objection, and leading, and no [173] foundation laid, and not binding upon any defendant in this proceeding.

The COURT.—Overruled.

Mr. FAULKNER.—Particularly leading.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 207.)

I received $100.00 a week for landing the liquor. The money was paid to me by Terry. About the

(Testimony of E. Magruder.)

20th or thereabouts of September I went to the "Quadra" in the night-time and tied up to the stern of her for a while and then cast loose and drifted throughout the night, and the next morning I ran alongside of the "Quadra" and loaded liquor, I think about 400 sacks, and took it to Russian Gulch.

Mr. FAULKNER.—May a general objection go to the entire testimony of the witness concerning his contact and conduct with the "Quadra"?

The COURT.—I think that would cover it.

Mr. FAULKNER.—Is that satisfactory to you?

Mr. RIORDAN.—Whatever the Court's ruling is.

The COURT.—It will be the same ruling, and you will have your exception.

(Rep. Tr., pp. 208, 209.)

All of the men aboard the "Quadra" were active in loading liquor to my boat, and at that time I was introduced to the Captain of the "Quadra." His name is Ford. I think that the captain of the "Quadra" at that time was running the winches.

After I had my load I cast off and left the side of the "Quadra" about daybreak and arrived at Russian Gulch in the morning and laid around all day and did not go in until night. I made two [174] or three or four more trips to the "Quadra," I think, and on all the trips pursued the general course I have outlined. Approximately, I should say, in all I have taken about

(Testimony of E. Magruder.)

1,500 cases from the "Quadra." The name of the captain of the "Malahat" is Murray.

Cross-examination by Mr. GREEN.

I remember meeting Mr. Green in the City Hall sometime ago and riding down on the McAllister Street car with him and I had a conversation with him at that time. Mr. Green asked me what I was doing and I told him a little longshoring. I did not tell him that I was doing nothing because the customs people had me tied up and scared to death, and that I could not make a move. I did not tell him that.

Representatives of the Government first talked to me about this case on the 31st of December. I understood they were looking for me and saw a piece in the paper that I had been arrested so I went up to find out what it was about. I have never been served with a warrant, and I have never been placed under bond. When I went to the Customs House I talked to Mr. Creighton. When I went there I kind of thought they knew something and rather than dodge them all the time they were looking for me I thought if I had anything coming I would take it and get it over with.

Mr. Creighton did not call my attention to the fact that they had it on record that I made these trips to the "Quadra." Mr. Creighton asked me to tell my experience while I was on the "Viz 4" from the time she changed her name, and I told him my story. I don't know whether Mr. Creighton knew what I had been doing with the "Viz 4"

(Testimony of E. Magruder.)

or not. Mr. Creighton did tell me about the trip on the 20th of September, that is he said he knew I made a trip to the "Quadra" then. I cannot say that he told me about any other trips, nor did he tell me that a warrant had been issued for my arrest, nor [175] did he tell me that he had evidence enough to arrest and prosecute me, nor did he tell me he knew all about my trips. I imagined he knew about them.

I have testified before the grand jury with reference to my operations in landing liquor. I do remember that I signed a paper saying that I waived my constitutional rights and my right to immunity, but that was not at the time I testified before the grand jury.

(Rep. Tr., pp. 198–214.)

TESTIMONY OF HERBERT J. CLANCE, FOR THE UNITED STATES.

HERBERT J. CLANCE, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Herbert J. Clance. I have not been charged as a defendant in this action, but I am willing to tell the Court and jury what I know about the facts in this case.

Q. Have any offers of reward or promise of immunity been made to you by any Government officers? A. No.

Mr. FAULKNER.—We object to that on the same grounds.

(Testimony of Herbert J. Clance.)

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 214.)

Neither Mr. Creighton nor anyone else in his department threatened me or told me that I was going to be arrested. I was down on Pier 9 when a gentleman came down from the office and told me that I was needed at the customs-house. I then went up to the customs-house.

(Whereupon the witness, after being advised of his constitutional right to refuse to testify by the Court, expressed his willingness to testify.) [176]

Mr. RIORDAN.—Q. Have you any idea of what date that was?

A. Well, it was somewhere around the 20th of September.

Q. Now, did you help get the cargo on board of the "Viz-4"? A. Yes.

Mr. FAULKNER.—If your Honor please, may an objection be noted in the record prior to the answer to the question?

The COURT.—Yes.

Mr. FAULKNER.—Upon all of the grounds indicated in the objections to the testimony of Mr. Magruder, and I ask the Court at this time that it may be considered that all testimony that this witness is about to give concerning his contact with the "Quadra" be deemed objected to by each and all of the defendants, and the objection overruled and an exception noted.

The COURT.—Yes.

(Testimony of Herbert J. Clance.)

Mr. FAULKNER.—In the interest of expedition.

Mr. RIORDAN.—Q. Did you go with Mr. Magruder to the landing place where he testified the liquor was landed? A. Yes.

Q. Prior to going to the "Quadra," had you made any visit to any other boat about that time for liquor?

Mr. FAULKNER.—The same objection as was made in the testimony of Mr. Magruder.

The COURT.—The same ruling, yes, for the present.

Mr. FAULKNER.—And an exception to the ruling.

(Rep. Tr., pp. 215, 216.)

I think I made the first trip to the "Malahat." I went on all the trips that Magruder was on. There was another man on that trip, whose name I don't remember.

Cross-examination by Mr. GREEN.

I testified before the grand jury in connection with bringing in liquor from boats out at sea in this case. I cannot [177] recall the date that I first was taken to the customs-house by the Customs officer whom I have described. At the customs-house I saw Mr. Creighton. He asked me if I was on the "Viz–4" and I said, "Yes" and he told me that he knew about the trip of the "Viz-4" to the "Quadra."

I have not been arrested in connection with this case, nor am I under bond, nor have I ever been

(Testimony of Herbert J. Clance.)

indicted. I don't know what the Government would do to me if I refused to testify in this case.

The only written statement I remember giving was about my being on the boat that took liquor from the "Quadra." I gave that statement to Mr. Creighton and I was alone with Mr. Creighton when that statement was signed. I did not sign a waiver of immunity at the time I testified before the grand jury.

I have been doing nothing since I went up to see Mr. Creighton.

Rep. Tr., pp. 214–218.) [178]

TESTIMONY OF SAM CRIVELLO, FOR THE UNITED STATES.

Thereafter SAM CRIVELLO, a witness called on behalf of the United States, and being first duly sworn, testified as follows:

(Questions by Mr. RIORDAN.)

My name is Sam Crivello and I reside in San Francisco. I am one of the defendants charged in this indictment. I pleaded guilty to the charge in this indictment, but originally had pleaded not guilty.

I have told the Government officers what I know about this case and first talked to them about a month ago. My statement was made freely and voluntarily, without any promise of reward or immunity, and without being threatened in any manner by the Government officers.

(Testimony of Sam Crivello.)

I know Vincent Quartararo, one of the gentlemen here in the courtroom, and have known him for a good many years and have been employed by him.

Mr. COGHLAN.—We object to that as not relevant, competent or material, and upon the ground that no proper foundation has been laid for it.

The COURT.—It is impossible to tell, Mr. Coghlan. If he hired him to spade up his garden, it could not hurt you any. I anticipate that the Government intends to lead up to something connected with this case.

Mr. RIORDAN.—That is true.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 219, 220.)

Vincent Quartararo first employed me to work for him about April or May of 1924. [179]

Q. What was the work that he employed you to do?

Mr. CROWLEY.—Exception.

Mr. COGHLAN.—We object to the question as immaterial, irrelevant and incompetent, calls for hearsay, no proper foundation has been laid for it, particularly no proper foundation connecting the incident intended to be adduced with the matter alleged in this indictment, that it is not within the issues of the case, and is an attempt to prove an overt act or overt acts prior to the establishment of a conspiracy, if there be any conspiracy; that it is

(Testimony of Sam Crivello.)

not binding upon the defendant Quartararo, nor upon any of the defendants here.

The COURT.—What is your point, Mr. Coghlan, with regard to foundation?

Mr. COGHLAN.—There has been no foundation here showing a connection of Quartararo with the commission of any offense against the United States, nor has there been any connection between him and the conspiracy, the objects of which are recited in the indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Carrying liquor.

Mr. COGHLAN.—We move that that be stricken out as too vague, indefinite, uncertain, as not binding upon this defendant, or any of the other defendants in this case.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Did you talk with him on the arrangement of carrying liquor? Answer that "Yes" or "No." A. Yes.

Q. How were you to carry the liquor? [180]

Mr. COGHLAN.—We offer the same objection as to that, if it please your Honor, and upon the further ground that there is not, and, obviously there is not any foundation or connection between this employment and anything that pertains to the

(Testimony of Sam Crivello.)

issues raised by the plea of not guilty to this indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. By gasoline launch.

Q. What was the name of the gasoline launch?

A. "California."

Mr. COGHLAN.—The same objection runs to that, and your Honor will allow me the same exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you get the "California" from? A. From Sausalito.

Mr. COGHLAN.—We object to that as not relevant, material, or competent, and as having no bearing upon the issues of this case, and as not connected with this defendant, and having to do with other people that are not concerned here, or with whom this defendant, or any of these defendants, is concerned or are concerned.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. From whom in Sausalito did you get the boat "California"?

Mr. COGHLAN.—The same objection and exception.

A. Well, he gave me the keys to the pilot-house.

Q. Who gave you the keys? A. Vincent.

Q. Vincent who? A. Quartararo.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—The same objection, and I presume the same ruling and exception, your Honor. [181]

The COURT.—Yes, the same ruling.

Mr. RIORDAN.—Q. Did you go out in that boat for liquor or not? Answer "Yes" or "No."

A. Yes.

Mr. COGHLAN.—Just a minute. Will your Honor allow the objection heretofore made to apply to that, and an exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you go to?

Mr. COGHLAN.—The same objection and exception.

A. Outside of the Farallones.

Mr. RIORDAN.—Q. Outside of the Farrallones?

A. Yes.

Q. To what boat, first, if you went to any boat?

Mr. COGHLAN.—Just a minute. We object to that as not relevant, material or competent, upon the ground that no proper foundation has been laid, and upon the further specific ground that it may involve something that has absolutely nothing to do with the commission of any offense charged in this indictment, and that it is the duty of the district attorney first to show by a proper foundation that there is any such connection, if there be.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

(Testimony of Sam Crivello.)

A. The first boat, you want to know?

Q. Yes. A. That was the steamer "Norburn."

Q. And after that—

Mr. COGHLAN.—We move that that be stricken out as having nothing to do with the controversy here before us, and as having nothing to do with these issues, and no proper foundation laid.

The COURT.—I will ask him a question first: Did you go to the steamer "Norburn" for liquor?

A. Yes.

Q. Did you get liquor there? A. Yes. [182]

Q. What did you do with it when you got it?

A. Took it ashore.

Q. Who did you deliver it to?

A. Vincent Quartararo.

Q. The defendant Quartararo? A. Yes.

The COURT.—Motion denied.

Mr. COGHLAN.—We now move that the matter be stricken out which your Honor elicited, on the same grounds interposed and underlying the motion that we last made.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Approximately what time of the year, and what year was that? A. 1924.

Q. Do you know the month?

A. About April or May.

Q. April or May? A. Yes.

Q. Have you any idea as to what you brought in?

The COURT.—You mean from the "Norburn"?

Mr. RIORDAN.—From the "Norburn."

Mr. COGHLAN.—In April or May, 1924?

Mr. RIORDAN.—Yes.

Mr. COGHLAN.—We object to that on all of the grounds interposed, that it is not relevant, material or competent, and there is no proper foundation that has been laid, and I call your Honor's attention particularly to the fact that the treaty between the United States and Great Britain was made May 22, 1924, and that that is pleaded in the indictment.

The COURT.—It could not make any difference. These defendants here are charged with a conspiracy. Now, under familiar principles, if the conspiracy took place at another time, or under equally familiar principles, if there was a conspiracy between the defendant Quartararo and this defendant, it would be sufficient to convict, and it would be sufficient to convict whether it were before or after the time that the treaty was negotiated between the [183] United States and Great Britain. Furthermore, it is equally apparent to me, from all of the authorities which I had occasion to review in a previous opinion in this case that if there was a crime committed, and it was committed partly without, if it was beyond the limits which might be specified in any case,—it was committed partly without and partly within this jurisdiction, and, therefore, it makes no difference whatsoever, so far as this part of it is concerned, at least, whether or not the liquor was obtained outside an hour's steaming, or four marine leagues, or whatever it is.

Mr. COGHLAN.—Of course, the position that I personally take, if I may briefly state it, is this, that an accusatory paper of this character must inform the defendants of the particular conspiracy with which they are charged, and that it is not proper for the district attorney to allege matters such as are contained here, and which exclusively relate to the transaction affecting one vessel, to wit, the "Quadra," and surprise us by bringing into court matter that has absolutely nothing to do with the conspiracy that is attached to and woven around about and made a part of what occurred upon the "Quadra," and what occurred between this shore and the "Quadra" and no other vessel. It seems to me this ought to apprise my client, and the other defendants, here, of what they are brought into court to defend themselves against, and it would be impossible if it were the claim of the prosecution here and your Honor shoud sustain that claim, that any offense committed against the laws of the United States in connection with the prohibition act, or the Tariff Act of 1922 might be imported here for us to defend; absolutely impossible, our hands would be tied. We are only guided by this instrument, and so have we been guided, and we have thought that the proof of the prosecution would be, except in so far as it bore upon the issues here that were raised by the combination, of the accusation of the conspiracy, and the references to the particular vessel [184] involved; it would be

(Testimony of Sam Crivello.)

impossible for us to defend unless we depended upon that. That is the position that I take.

The COURT.—I do not know, Mr. Coghlan, to what extent your researches have gone in the matter of authorities, but the rule is thoroughly well settled in this court without a single dissent, and has been so often presented here, for instance, in the Nan Patterson Case, in the recent case of the policemen that were here, and in a dozen other cases, that the thing, after all, is the conspiracy, and the defendants, having been apprised that the Government charged that they had entered into a conspiracy to violate certain statutes that any acts which were in violation of those statutes and which concerned any of the defendants, and any other person, or more than one person, so that it would constitute, under the law, a conspiracy, is admissible. We have had that here many times. The authorities are perfectly clear upon this subject, and the reasoning is equally clear; and it is equally well settled that where the indictment may charge a single overt act, that any number of overt acts which are in pursuance of it, or in connection with the conspiracy, are admissible. The objection is overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Will you read the last question?

(Last question repeated by the reporter.)

A. A load of liquor.

Q. Where did you deliver that liquor?

(Testimony of Sam Crivello.)

A. Oakland Creek.

Q. I believe you have already answered his Honor that you delivered it there to Mr. Quartararo?

A. Yes.

Mr. COGHLAN.—We move that this testimony respecting this bringing in of the liquor be stricken out on the ground that if it affects any conspiracy or any violation of the law, that it has nothing to do with the issues here involved, and we make that objection on behalf of all of the defendants, and each one of them [185] separately.

The COURT.—Overruled, and motion denied.

Mr. RIORDAN.—We reserve an exception.

(Rep. Tr., pp. 220–226.)

A. After I delivered the liquor in Oakland Creek I took the "California" out to the "Malahat."

Mr. COGHLAN.—I presume that my objection goes to this?

The COURT.—I think so. I think you have saved the point, if it is good.

(Rep. Tr., p. 227.)

I made contact with the "Malahat" about the beginning of August 1924. I went on the "California." The crew comprised just one man beside myself, a man by the name of Dave Worrick. He was my engineer and was recommended by Vincent Quartararo.

Mr. COGHLAN.—We now ask that your Honor allow an objection to go to that, that we made heretofore.

The COURT.—Yes.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—And the same exception.

The COURT.—Yes.

(Rep. Tr., p. 227.)

Worrick lives in Alameda or Berkeley, either one of those towns. I attempted to ascertain from the officers where he was. I tried many days to locate him but could not do so. I made contact with the "Malahat" about the beginning of August, 1924. In all I made approximately eight trips to the "Malahat," and used the motor-boat "California" on all these trips. I brought back from the "Malahat" on each trip about the same cargo, on an average about 800 to 1,000 cases on each trip; that is, cases and barrels together, and I brought these to Oakland Creek. I made a trip in the "California" to the "Quadra" the early part of September, 1924.

Q. Just tell us about that trip, will you please? [186]

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed, immaterial, irrelevant and incompetent, and on all of the grounds heretofore interposed.

The COURT.—Objection overruled.

Mr. COGHLAN.—Note an exception.

(Rep. Tr., p. 230.)

I don't know the amount, but it was for the purpose of completing the full order that I had to go to the "Quadra." I loaded up over at the "Malahat" but there was not enough for the load so the captain of the "Malahat" gave me a slip contain-

(Testimony of Sam Crivello.)

ing an order for 49 or 50 cases to complete the order. I went over to the "Quadra" and had that order filled. I thereupon took the load to San Francisco and delivered it in Oakland Creek to Vincent Quartararo.

Q. Did you meet another party over at Vincent's place of business who was introduced to you by Vincent as C. H.? A. Yes, sir.

Mr. COGHLAN.—That is of course a leading question and suggestive of an answer and puts the answer clearly in the mouth of the witness.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 231.)

Quartararo introduced me to C. H. I now see C. H. in the courtroom and I point out the first one at the corner in the last row as the gentleman. (Witness indicating the defendant C. H. Ballinger.) I just saw him the once, and it was in September I believe, of 1924, and I had a conversation with him about loading on the "Quadra," that is about bringing out some empty sacks to the "Quadra." Mr. Belanger asked me if I would take them out and I said "Yes."

Mr. COGHLAN.—We move that that be stricken out as not responsive to the question, and we ask for the additional objection that it is hearsay, and not material, relevant or competent, and no [187] proper foundation for it.

The COURT.—Motion denied.

(Testimony of Sam Crivello.)

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 232, 233.)

I took the sacks out to the "Quadra" but did not land them there because of the guard rail on the "Quadra," and I therefore took them to the "Malahat" and left them there. I originally got them at Pier 22, or perhaps 20. I do not know who delivered them to the pier, but they were on board the "California," my boat, when I got there. During my trips out there I saw other boats meeting the "Malahat" and "Quadra," such as the "Ocean Queen," the "Viz 4" and another boat which had no name, and also the "Florence." Of these boats I actually saw the "Ocean Queen" receive cargo from the "Malahat" and the "Quadra." I first met the captain of the "Quadra" when I gave him the slip that the captain of the "Malahat" gave me. I pick him out in the courtroom as the man in the second row in back. (Witness indicating George Ford, one of the defendants.) I also met the captain of the "Malahat," whose name is Murray.

I first met C. H., the date I don't remember, at the place of business of Quartararo, the Bohemian Cocktail Supply Company on Minna Street in this city and county. Vincent Quartararo gave me my instructions about going out to get the cargo. My brother, Marino Crivello, was during this time operating the motor-boat "Marconi," and about the middle of August, 1924, I saw him a couple of times out near the "Quadra" and the "Malahat."

(Testimony of Sam Crivello.)

It was about the middle of August, 1924, I saw him pulling away from the "Malahat" as I was going to her. The second time I saw him I found him tied behind the "Malahat" getting a load. I do not know whether he got a load or not.

Cross-examination.

I took loads of liquor from the "Quadra" and delivered them [188] to Vincent Quartararo in Oakland Creek. Quartararo was personally present. I don't remember the date that I was first taken into custody, but I should say it was about a month and a half ago, or two months, or something like that. At the time that I was arrested I retained a lawyer, but I don't know whether my lawyer talked with Government officials in regard to my case. My lawyer advised me to plead guilty in this case. I don't know whether that was after he had seen the district attorney or not. My lawyer told me that it would be better for me to plead guilty. I believe my lawyer had gone to the district attorney's office and talked the case over with him at that time.

I am taking my own chances with regard to punishment. I am telling the truth and I am not telling any lies. I think it better for me to take the witness-stand and tell the truth than to stand trial, and have been so advised by my attorney, and I believe that I am going to be dealt with leniently after having testified for the prosecution.

I was operating the motor-boat "California," when my brother's boat the "Marconi," which was

(Testimony of Sam Crivello.)

operated by him, was seized by the Government, and I have an interest in that boat. It is true that I had a conversation with Vincent Quartararo in which I asked him to put up bonds in order to release my boat from the Government, and it was after that time that I came to the conclusion that I should plead guilty. Vincent Quartararo refused to release my boat saying, "I have nothing to do with that." Quartararo gave me the order to go to the "Quadra" and bring the stuff in. I do not know whether Quartararo was an agent for the "Quadra" or not. I went out to the "Malahat" and was sent from the "Malahat" by the captain of the "Malahat" to the "Quadra" on the occasion when I went out from Vincent Quartararo.

All of the deliveries of the contraband liquor taken from the [189] different vessels by me were made at Oakland Creek, and on each occasion the defendant Vincent Quartararo was present. The first trip from the "Norburn" was about the beginning of May, that is as close as I can remember. It was about the last of April or the first of May; that is, it would be within the first five days preceding the end of April and the first five days of the month of May. I have no other way of fixing the date, except to the best of my recollection. My wages were paid by Quartararo. The first time that I delivered the liquor to Quartararo was about nine or half past nine at night, and it was some place close by East Oakland. I always delivered at a wharf there. I took the liquor the sec-

(Testimony of Sam Crivello.)

ond time from the "Norburn" in the motor-boat "Skidaddle," and that was about the same time as the first trip. The next time I delivered to Vincent Quartararo was about a week or ten days afterwards. I don't remember the exact date, and that delivery occurred from the "Norburn." I at that time was operating the motor-boat "Skidaddle." The "Skidaddle" was furnished to me from Oakland by Vincent Quartararo. The next delivery after that was about the middle of May, or the last of May, I don't remember the date now, and Vincent Quartararo was there at that time. The next time was in August, the early part of August, 1924, and at that time I used the motor-boat "California" and the delivery was made at the same place. The first delivery from the "California" was made the first day of August. I can remember that date, but don't remember the day of the month in April or May. The next delivery after the delivery on the first of August was about three or four days after, and made to the same place. The only person with me was my engineer Worrick. There were some other people present when I made the delivery to Quartararo, but I could not recognize who it was. It was night. They carted the liquor away in trucks. I did not help them load it, I just took it from below and put it on deck. I could not recognize who the parties [190] were other than Quartararo; I had never seen them before. I could not recognize them if I saw them. Vincent Quartararo was present at

(Testimony of Sam Crivello.)

every trip. I delivered at Oakland Creek three times from the "Norburn" and eight times from the "Malahat," and on one occasion I got the cargo partially from the "Malahat" and partially from the "Quadra," and I delivered them all to the same place in Oakland except at one time, the last trip, when the delivery was made at Pacific City in San Mateo. At that time I delivered it to the wharf there to Mr. Quartararo. The time I made the delivery at Pacific City, Quartararo was present and the liquor was unloaded by him to the wharf, and they took it from there. In the dark I could not see who they were. There were no lights there and I had no lantern or flashlight, and they did not come on board. Quartararo was standing right by the end of the pier. He came up and shook hands and talked with me. It was about ten o'clock at night when I went to Pacific City and I had been told to go there by Vincent Quartararo. That was about the beginning of September. I don't remember whether it was the first, second or fourth. I have no means of fixing the particular day when that occurred, but that was the last occasion, or the last trip that I made. I think in all I made about twelve or thirteen trips between April or May, or the last part of April and the first part of May, and sometime in the beginning of September. The next to the last trip was made around the 25th or 24th of August, or something like that, or maybe it was three or four days before the 24th of August. I cannot remember the exact date. I be-

(Testimony of Sam Crivello.)

lieve that the third one from the last trip was about four or five days apart, about the 21st of August. The trips were about four or five days apart.

Mr. COGHLAN.—Have I covered all the deliveries that you made in my questions to you?

A. About that, 10 or 12, or 13, whatever it was.

Q. I have only asked you about seven. You would remember the [191] other dates if I did ask you? A. No.

Q. In other words, you want to convey to us the information that somewhere between April 1, or thereabouts, and September, at the beginning of September, you made something in the neighborhood of from 10 to a few more deliveries; is that correct?

A. About 10 or 11; I don't remember myself.

The first delivery that I made was in the "Skidaddle" and was made about nine or nine-thirty at night at Oakland Creek. I do not remember of any other person during all these trips who helped [192] in unloading the boat or taking the stuff away, outside of my engineer, whom I cannot find. (Questions by Mr. GREEN.)

My last trip was about the first part of September, and that was partially from the "Malahat" and partially from the "Quadra." I don't remember the exact days, whether it was the 3d, 5th or 6th, but it was somewhere around that neighborhood. I will say it was about the first week in September. That is the last trip I made out there. I took the bags out to the "Quadra" before the

(Testimony of Sam Crivello.)

last trip, that would be sometime in August, 1924. I am very positive of that. I fixed the last trip very clearly because of it being made at Pacific City, and the trip that I took the bags out on was the trip before that. The wharf at Pacific City where I took the liquor to runs easterly from the amusement park. Basing my recollection upon the trip to Pacific City, I place the time that I made the trip to the "Quadra" with the bags around the neighborhood of the 22d or 24th of August, and I took them to the "Quadra" but could not put them on board because of the guard rail of the "Quadra" and therefore took them to the "Malahat."

(Questions by Mr. RIORDAN.)

I believe the "Malahat" had left out there when I took the last load in, but on the load before the last one the "Malahat" was there, and the next time I went out the "Malahat" had left. The dates that I have been fixing are about as close as I can get.

Mr. RIORDAN.—And when these attorneys are telling you, fixing your dates as the 1st of September, might it be the 1st of October—

Mr. GREEN.—Just a moment.

Mr. RIORDAN.—Just allow me to finish the question.

Mr. COGHLAN.—The question is not fair. [193]

Mr. RIORDAN.—When it comes to fairness, we are at least entitled to finish a question, and then

(Testimony of Sam Crivello.)

you can make all the objections you want. Read the question.

(Last question repeated by the reporter.)

Mr. RIORDAN.—I mean when you referred to the last trip.

Mr. GREEN.—Just a moment. I object to the question as not being proper redirect examination, and an attempt to bolster up the witness, and change his absolute testimony.

Mr. RIORDAN.—Oh, no.

Mr. GREEN.—Leading and suggestive.

Mr. RIORDAN.—I think it is fairly clear, but I am making it a little more clear.

The COURT.—He may answer.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 253, 254.)

A. Well, about the dates I don't hardly remember. I don't think I could be that far off, from September to October. That is my judgment, but I have no records to go by.

(Rep. Tr., pp. 219–254.)

TESTIMONY OF C. E. BALIN, FOR THE UNITED STATES.

C. E. BALIN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is C. E. Balin and I am manager of the Grand Union Hotel, and was such on October 13, 1924, and I was present when the members of the crew of the "Quadra" registered at the hotel,

(Testimony of C. E. Balin.)

and I registered them. The paper you have shown me is the hotel register sheet of the date of October 13. I do not know whether I saw the name that you showed me, McLennon, written, because half a dozen of them registered there and I stood behind the counter. I don't know, or rather, I did not see the name written.

(Rep. Tr., pp. 254, 255.) [194]

TESTIMONY OF J. MILLER, FOR THE UNITED STATES.

J. MILLER, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is J. Miller and I am hotel clerk for the Grand Union Hotel, and was such on October 13, 1924. I did not see the gentleman referred to as "McLennon" write in the register. I was not on duty at that time. I saw the sheet of paper later, but at the time it was written I was at supper.

(Thereupon the hotel register was introduced for identification and marked U. S. Exhibit No. 28 for Identification.)

(Rep. Tr., pp. 255–257 incl.)

TESTIMONY OF D. R. JACKS, FOR THE UNITED STATES.

D. R. JACKS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is D. R. Jacks and I am a clerk in the

(Testimony of D. R. Jacks.)

marine department of the custom-house. I recognize the cards shown me. They are records from the custom-house and I am the custodian of them, and they were delivered to the custom-house on May 23, 1923, and delivered to me by Mr. O. Weissich of the Western California Fish Company.

(Thereupon said exhibits were received in evidence and marked U. S. Exhibit No. 29.)

(Rep. Tr., pp. 257, 258.)

TESTIMONY OF O. WEISSICH, FOR THE UNITED STATES.

O. WEISSICH, a witness called on behalf of the United States, being first duly sworn, testified as follows: [195]

My name is O. Weissich and I am in the wholesale fish business with the Western California Fish Company. I saw Government's Exhibit No. 29, consisting of two cards signed, and they were signed by Emilio Pensotti.

(Rep. Tr., p. 259.)

TESTIMONY OF H. D. CROSS, FOR THE UNITED STATES.

H. D. CROSS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is H. D. Cross and I am the manager of the safe deposit department for the Bank of Italy at its head office, and was such on November

(Testimony of H. D. Cross.)

8th, 1924. I could not say whether I saw the defendant Quartararo on the morning of November 8th, 1924, or not. I would have to look up the record to find out, and I have not done that, but I can do so between now and to-morrow morning.

(Rep. Tr., pp. 259, 260.)

TESTIMONY OF R. J. HOSKINS, FOR THE UNITED STATES.

R. J. HOSKINS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is R. J. Hoskins, and on October 8th, 1924, I was a teller in the Bank of Italy at its head office, Powell and Market Streets.

Q. Did you see Mr. Quartararo on that day?

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed by both counsel.

The COURT.—Objection overruled.

Mr. COGHLAN.—We reserve an exception.

(Rep. Tr., p. 260.) [196]

A. Yes, sir.

The first time I saw him I should judge was around 11:00 o'clock. I did not have any conversation with him, nor did he deliver anything to me.

Q. Did you see him talking to anybody else?

Mr. COGHLAN.—The same objection, not material, relevant or competent.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Testimony of R. J. Hoskins.)

A. He was talking to Mr. Pearson, a teller in the cage with me.

Mr. GILLIS.—Q. Could you hear what was said?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. No, sir.

Mr. GILLIS.—Q. Did you see him leave anything with Mr. Pearson at that time?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. No, sir.

Mr. GILLIS.—Q. Did you see him leave anything later with either yourself or with Mr. Pearson?

Mr. COGHLAN.—We interpose the same objection, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. No, sir.

(Rep. Tr., pp. 261, 262.)

These bills that have been shown me I first saw on Monday, sometime in the morning. They were brought into the bank to the [197] *to the* chief teller. I do not know who brought them there. The bills were in half at that time. I just happened to see them. I didn't do anything with them. The first time I had them was when I took them down to the Federal Reserve Bank. I didn't

(Testimony of R. J. Hoskins.)

arrange to piece them together, Mr. Pearson did that. I turned them into the Federal Reserve Bank for some bills that were not marked and received for them $83.00.

(Thereupon said bills were marked for identification U. S. Exhibits 30 to 36, inclusive.)

I do not know who the man was that brought them in, but I never saw him in the bank and I have never seen him since.

(Rep. Tr., p. 264.)

TESTIMONY OF A. F. PEARSON, FOR THE UNITED STATES.

A. F. PEARSON, a witness called on behalf of the United States, being first duly sworn, testified as follows:

Mr. GILLIS.—Q. Mr. Pearson, these Exhibits 30 to 36 inclusive, did you see these on the date that Mr. Hoskins testified to, on Monday, the 10th of November, 1924?

Mr. FAULKNER.—The same objections, your Honor, concerning that, subsequent to the consummation of the conspiracy.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Yes.

(Rep. Tr., p. 264.)

I don't know who brought them in. I saw Quartararo in the bank on Monday.

Q. Did you have a conversation with him with reference to these bills? [198]

(Testimony of A. F. Pearson.)

Mr. COGHLAN.—If the Court please, we offer the same objection.

The COURT.—The objection is overruled.

Mr. COGHLAN.—Exception.

A. Not that I recall.

(Rep. Tr., p. 265.)

I do not think I had any conversation with Quartararo with respect to these bills. I do not know who brought them in, and they were not deposited to any account in our bank. Some man brought them in and wanted to know if they were good. He just left them until he could find out if they were.

Mr. GILLIS.—Q. Did you see Mr. Quartararo a day or two or three days prior to that time?

Mr. COGHLAN.—We object to that. It might not be harmful, but it is not relevant, competent or material. I think counsel has exhausted this kind of inquiry.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I think I did, yes.

Mr. GILLIS.—Q. Did you have a conversation with him? A. I think so.

Q. What was that conversation that you had with him?

Mr. COGHLAN.—We object to that as hearsay, and as hearsay as to the other defendants, and something that occurred subsequent to the time of the conspiracy set forth in the indictment; that is, occurring subsequent to the time of the alleged

(Testimony of A. F. Pearson.)

conspiracy, and as having no proper foundation, as indicating nothing at all with reference to the conspiracy that is charged here in the indictment; in other words, it is not led up to by any foundation whereby we can even intelligently object to it, except that there is no foundation [199] here.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I could not say. I waited on Mr. Quartararo a number of times prior to that.

Mr. GILLIS.—Q. Did you have any conversation with Mr. Quartararo with reference to the redemption of some one dollar bills?

Mr. COGHLAN.—We object to that as leading and suggestive of an answer, and with a great deal of regret assign that as misconduct on the part of the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I did.

Mr. GILLIS.—Q. About when was that with reference to the time that you got those bills?

A. I would say it was within three days; it might have been the same day; it might have been a day or so before.

Q. What was that conversation?

Mr. COGHLAN.—We object to that on the same grounds.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. Mr. Quartararo asked me if torn bills could

(Testimony of A. F. Pearson.)

be redeemed, or words to that effect. I think I asked Mr. Quartararo what kind of bills he had reference to, and asked him if he had the bills with him and he said, "no." I told him if he would bring them in I would tell him, and that was all that was said, and a day or two or three afterwards these bills were brought in and I had a conversation with the man who brought them in. I don't recall just what it was. He said he had some torn bills. I told him I didn't have time to look at them; that was right during the rush hour at noon. I asked him [200] if he would leave them on receipt and I would look at them and if possible would collect on them for him. He said he would do that. I asked him if he could come back later the same day and he said he would if he could, but otherwise he would be in during the early part of the next week.

Mr. FAULKNER.—Your Honor, might I interrupt to object to this conversation as immaterial, irrelevant and incompetent as to any party not connected with this proceeding, and I move to strike out the answer of the witness.

The COURT.—The objection is overruled and motion denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 265–268.)

I did not give him a receipt; he left the bills without any receipt. I did not know that this was in any way connected, nor did I have any way of finding out that it was in any way connected with Quartararo. Later that afternoon I got the bills

(Testimony of A. F. Pearson.)

out and looked at them and pasted some of them together and had another man do the rest. On Monday I referred them to an officer of the bank and when he saw the number there was of them he told me not to handle them and to let the man take them down himself and have them redeemed. I then took them back and locked them up the till. I did not see the person who gave them to me after that, but I held the bills and when I came back from lunch on Monday Mr. Hoskins told me that the man had been in while I was out to lunch but that the bills were locked up in my cabinet and that he could not get them. He told the man to come back later, and the man said he would. Mr. Hoskins then asked me for the bills, and I gave them to him. Then later on I took them and locked them up again, and several days later I gave them back to Mr. Hoskins and that is the last time I saw them. I did not go down to the Federal Reserve Bank with them, nor did I see the man that brought them in after that. [201]

(Questions by Mr. COGHLAN.)

I do not know who brought these bills into the Bank of Italy, nor did I ever have any conversation with the defendant Quartararo with respect thereto. I gave the bills to Mr. Haskins, my assistant.

(Rep. Tr., pp. 264–271 incl.)

TESTIMONY OF MILTON M. DAVIS, FOR THE UNITED STATES.

MILTON M. DAVIS, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is Milton H. Davis and I am a deputy county clerk of the city and county of San Francisco, and I have brought with me the original Articles of Incorporation of the Bohemian Cocktail Supply Company, filed in the office of the county clerk of the city and county of San Francisco on May 15, 1917.

Mr. COGHLAN.—We move that the testimony of this witness be stricken out as not material, relevant or competent, having no bearing upon this case.

The COURT.—I cannot tell. What do you intend to offer them, Mr. Gillis?

Mr. GILLIS.—I do not care to offer them in evidence. I don't know that we can put the original articles in evidence, they are records of the city and county of San Francisco. I simply want to have them identified, and later will ask the witness following this witness as to the affidavits taken on the articles of incorporation.

The COURT.—Motion is denied.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 271, 272.)

The number in our office of these articles is Filing No. 15,006. [202]

TESTIMONY OF E. J. CASEY, FOR THE UNITED STATES.

E. J. CASEY, a witness called on behalf of the United States, being first duly sworn, testified as follows:

My name is E. J. Casey and I am a notary public for the city and county of San Francisco, and was such on the 15th day of May, 1917. The certificate attached to the articles of incorporation numbered 15,006 is my certificate and is an acknowledgment of the individuals who signed the articles of incorporation.

(Whereupon a photostatic copy of the articles of incorporation of the Bohemian Cocktail Supply Company, as filed in the office of the county clerk of the city and county of San Francisco, numbered 15,006, was offered, and it was stipulated between counsel that the photostatic copy may substitute the original for the purposes of the offer, counsel for the defendants, however, reserving its objections to the introduction of the original or its copy in evidence.)

Mr. GILLIS.—I now offer the photostatic copy of that part of the articles of incorporation, No. 15,006, which has just been testified to, showing the signature of Vincent Quartararo.

Mr. COGHLAN.—We object to it on the ground that no proper foundation has been laid for it, and that it is not material, relevant or competent.

The COURT.—The objection is overruled.

(Testimony of L. E. Shields.)

Mr. COGHLAN.—Exception.

(Whereupon said Exhibit was introduced in evidence and marked U. S. Exhibit No. 37.)

(Rep. Tr., pp. 272–274 incl.) [203]

TESTIMONY OF L. E. SHIELDS, FOR THE UNITED STATES.

L. E. SHIELDS, a witness called for the United States, first being duly sworn, testified as follows:

My name is L. E. Shields, and I am chief of the commercial bookkeeping department of the Bank of Italy at its head office, Market and O'Farrell Streets. I have with me the signature card of Vincent Quartararo, which is used for his personal account. I know this is the signature of Vincent Quartararo, but I don't know who Vincent Quartararo is.

Mr. COGHLAN.—We move that the answer be stricken out as not responsive to the question. We also desire to object to the question on the ground that there is no proper foundation laid for it, and it is not material, relevant or competent.

The COURT.—Motion denied and objection overruled.

Mr. GILLIS.—In place of offering the original card I desire to offer a photostatic copy of the card.

Mr. COGHLAN.—As to that we have no objection.

Mr. FAULKNER.—Save the objection, of course, it is not binding upon any of the other defendants in the case.

(Testimony of L. E. Shields.)

The COURT.—It is only for the purpose of furnishing an examplar of the handwriting?

Mr. GILLIS.—That is the only purpose for which it is offered. I offer it in evidence.

Mr. COGHLAN.—We object to it on the ground that there is no proper foundation, no connection between the defendant and any other thing in the record, and it is not relevant, material or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Did your Honor pass upon my objection? [204]

The COURT.—I overruled the objection.

Mr. FAULKNER.—Exception.

(Whereupon said card was introduced in evidence and marked U. S. Exhibit No. 38.)

(Rep. Tr., pp. 274, 275.)

Mr. GILLIS.—Q. Have you checks No. 301 and 303 to the account of Vincent Quartararo?

A. Yes.

Q. Those two checks are what, Mr. Shields?

Mr. COGHLAN.—We object to that on the same grounds, that no foundation has been laid, it is not material, relevant or competent to anything here.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 275.)

These are checks of Vincent Quartararo paid through the Bank of Italy by us on November 3*th* and November 28th, 1924.

(Testimony of L. E. Shields.)

Mr. GILLIS.—In place of the two original checks I offer in evidence, may it please the Court, photostatic copy of check No. 301, and ask that it be introduced in evidence, the offer being made solely for the purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—We object to that on the ground that no proper foundation has been laid, it is not material, relevant or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(Whereupon said check was marked U. S. Exhibit 39 and admitted in evidence.)

(Rep. Tr., p. 276.)

Mr. GILLIS.—I offer in evidence check No. 303 of Vincent [205] Quartararo on the Bank of Italy, a photostatic copy of the original, and ask that it be introduced in evidence, it being introduced for the sole purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(Whereupon said check was marked U. S. Exhibit 40 and introduced in evidence.)

(Rep. Tr., p. 276.)

I have with me the statement sheet for these particular checks, which were delivered on November 5, 1924. They are the statements of July 31, August 30, October 31, and November 20, and contain the

(Testimony of W. E. Monahan.)

signature card for said statements, which is a receipt card.

Mr. COGHLAN.—We make the same objection and take an exception.

Mr. GILLIS.—I offer in evidence, may it please the Court, a photostat copy of the receipt card of Vincent Quartararo to the Bank of Italy, the sole purpose being to furnish an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—The same objection and exception.

(Whereupon the said card was introduced in evidence and marked U. S. Exhibit 41.)

(Rep. Tr., pp. 274–276½ incl.)

TESTIMONY OF W. E. MONAHAN, FOR THE UNITED STATES.

W. E. MONAHAN, a witness called for the United States, first being duly sworn, testified as follows:

My name is W. E. Monahan, and I have with me the affidavit of registration of Vincent Quartararo. This is the original [206] affidavit of Vincent Quartararo, who lives at 1246 Eleventh Ave., San Francisco.

(Rep. Tr., p. 277.)

TESTIMONY OF F. C. WILHEIM, FOR THE UNITED STATES.

F. C. WILHEIM, a witness called for the United States, being first duly sworn, testified as follows:

My name is F. C. Wilheim, and on the 25th day of September, 1924, I was a deputy registrar of voters. The signature on the affidavit of registration of Vincent Quartararo, who lives at 1246 Eleventh Ave., being numbered 217,601, it being the original affidavit of registration that the deputy registered has just testified about, is in my handwriting.

Mr. COGHLAN.—The same objection to that, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

I took that affidavit of registration.

Mr. GILLIS.—I now ask that the photostat copy of this affidavit of registration be received in evidence, the sole purpose being for the purpose of furnishing an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—We offer the same objection, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Whereupon said affidavit was marked U. S. Exhibit 42 and admitted in evidence.)

(Rep. Tr., pp. 277, 278.) [207]

TESTIMONY OF MARINO CRIVELLO, FOR THE UNITED STATES.

MARINO CRIVELLO, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is Marino Crivello, and I live at 779 Chestnut Street, San Francisco, California, and have lived there for about four years. I know Vincent Quartararo and have known him since 1915. I own the gasoline launch "Marconi," and in the year 1924 Mr. Quartararo employed me to do work with that boat, and I think that it was around the 19th, 20th or 21st of September, 1924. One day he rang me up at my house—

Mr. COGHLAN.—Just a minute. We object to this, if the Court please, as not material, relevant or competent, and on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

(Rep. Tr., p. 279.)

He rang me up at my house and he said he wanted to see me at the cocktail place on Minna Street, and I went there but I did not see Vince; I saw C. H. He said his name was C. H. And when I got down to the cocktail place I did not see Vince but I saw his father.

Mr. FAULKNER.—If the Court please, we object to that as immaterial, irrelevant and incompetent, hearsay and not binding upon any person be-

(Testimony of Marino Crivello.)

fore the Court on the issues involved in this indictment.

The COURT.—Q. Was C. H. there at the time?

A. Yes, sir.

Q. And did he hear what Vincent's father said?

A. He said, "That is the man that my son rang up."

Q. He said that to C. H.? A. Yes.

The COURT.—I will overrule the objection.

Mr. FAULKNER.—Exception. [208]

I see C. H. in the courtroom now.

(Whereupon, at the direction of Mr. Riordan Mr. Bellanger stood up and was identified by the witness as C. H.)

C. H. told me he wanted me to work on the outside. At first he asked me if I had a job and I said, "Yes" and he then asked me if I wanted to go to work outside. I asked him what kind of work he had and he said, "Well, if you want to go to work I'll let you know," and I told him I would go to work and asked him what kind of work he had and he said he had some stuff to be transferred from the "Malahat" to the "Quadra." I told him that I would do it, and he asked me how much I wanted, and I told him I had never done that kind of work before and he told me that if I went to work he would treat me good, and I did consent to do the work, and subsequently I did go outside in my motor-boat "Marconi."

C. H. gave me two letters, one for the transfer of the cargo, and one to bring a load ashore.

(Testimony of Marino Crivello.)

Q. Did he say on the one paper what it was a transfer for?

Mr. COGHLAN.—We object to that as not material, relevant or competent, and on the ground no proper foundation has been laid, and it is hearsay and not the best evidence.

The COURT.—I am not sure whether you are asking him what was in the letter or what Mr. Bellanger said about it.

Mr. RIORDAN.—It is the letter. I want to clear up what he said about the transfer. I will reframe the question.

The COURT.—Your question is doubtful about that.

Mr. RIORDAN.—Q. Did C. H. tell you what the first letter was?

A. Yes, one for the transfer and one for the load.

Q. What do you mean by the transfer—do you mean from the "Malahat" to the "Quadra"?

A. Yes.

Mr. FAULKNER.—Your Honor, we object to the witness determining what another person meant by certain words; the document speaks [209] for itself.

Mr. RIORDAN.—I am asking him for his explanation of it, to clear up his explanation of it; he has given it in his own verbiage.

The COURT.—He previously testified that he was told that he was to be employed to transfer from the "Malahat" to the "Quadra."

(Rep. Tr., 279–281.)

(Testimony of Marino Crivello.)

C. H. said one order was to transfer from the "Malahat" to the "Quadra" and one to bring a load ashore. He told me to bring the load to Drakes Bay, and he told me to go to the "Malahat" and get the load. I arrived at the "Malahat" in the morning, about 9:00 or 10:00 o'clock and I gave the order to the captain. At that time my brother Peter Crivello was with me. Thereupon the captain of the "Malahat" gave me 40 barrels of whiskey and I put them into my boat. I thereupon went to the "Quadra" and saw the captain of the "Quadra" and my brother gave him the letter. I then loaded the 40 barrels of whiskey on the "Quadra" and went back to the "Malahat" and took 35 barrels more of whiskey and loaded them on the "Quadra." I thereupon took a load of sacks of whiskey from the "Quadra" to Drakes Bay, leaving the "Quadra" about 4:00 or 5:00 o'clock in the night, and arriving in Drakes Bay about 12:00 or 1:00 o'clock that night.

Q. How did you know who to give it to at Drakes Bay?

Mr. FAULKNER.—That is objected to as immaterial, irrelevant and incompetent, and there is nothing in the record that he gave it to any person whomsoever.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 284.)

A. C. H. says, "When you go to Drakes Bay ask for Joe." [210]

(Testimony of Marino Crivello.)

I went to Drakes Bay and called for Joe but I didn't know who Joe was. I thereupon unloaded the whiskey and then went back to the "Malahat." I got $500.00 for landing the whiskey at Drakes Bay from Joe. After that I went back to the "Malahat" the same night and tied up outside her and stayed there all day and all that night because they had no more room to put stuff on the "Quadra." The next day I think I transferred about two or three loads of Chinese wine from the "Malahat" to the "Quadra." I think I stayed out there about two or three days and when I left I went to San Francisco and saw C. H. and he asked me if I had finished the work and I told him I had not finished yet. About two or three days later I went to the "Malahat" again and transferred the Chinese wine. C. H. gave me another document of that kind. On this trip I transferred empty barrels from the "Quadra" to the "Malahat." They were empty oil barrels, and I also transferred from the "Malahat" to the "Quadra" about 15,000 sacks and some provisions. The sacks were empty sacks. I then landed from the "Quadra" at Drakes Bay liquor in about the same manner as I did the first time, and when I finished that trip I came ashore. C. H. never paid me for transferring that from the "Malahat" to the Quadra." I saw him about it at the cocktail place and he asked me how much I wanted and I said I wanted $1,700.00, but he said that was too much and thereupon said he would talk to

(Testimony of Marino Crivello.)

Vince and fix it up with Vince. Vince gave me $500.00 on the 28th day of January, 1925.

Mr. FAULKNER.—Now we object to that, if the Court please, as immaterial, irrelevant and incompetent, and a fact occurring subsequent to the indictment in this case, and not binding on any other defendant in this proceeding.

Mr. COGHLAN.—And we move that it be stricken out, may it please the Court, upon the same grounds. [211]

The COURT.—That is not a statement, that is a specific act.

Mr. FAULKNER.—It is an act or transaction occurring with one of the alleged conspirators subsequent to the consummation of the conspiracy alleged in the indictment.

The COURT.—Yes, I know, but the rule of one binding the others must be covered by the instructions because in any event it would be binding upon Mr. Quartararo. The objection will have to be overruled.

Mr. RIORDAN.—And as to them, your Honor, I take it the conspiracy has not terminated, that the fruits of the transaction had not terminated.

The COURT.—That of course does not appear yet. I will cover it by instructions so that the other defendants will be protected.

Mr. COGHLAN.—And your Honor will allow the additional objection that there is not any foundation?

The COURT.—Objection overruled.

(Testimony of Marino Crivello.)

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—He has answered that question.

Q. Did you also have a talk then with Vince about this payment?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Sure.

Mr. RIORDAN.—Q. What did Vince have to say about it?

Mr. COGHLAN.—We offer the same objections that heretofore have been interposed; it is not material, relevant or competent, no proper foundation, and it concerns a time subsequent to the transactions referred to in the indictment.

The COURT.—Objection overruled. [212]

Mr. COGHLAN.—Exception.

A. I would go and see Vincent Quartararo every week, every two weeks, every month.

Mr. COGHLAN.—I move that that be stricken out as not responsive to the question.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

A. (Continuing.) —And he kept telling me all the time, when the case was over with he would give me the money.

Mr. COGHLAN.—We move that that be stricken out on the ground that it is not responsive, and is not certain as to dates, and it is not material, relevant or competent, and it has no proper foundation in the evidence.

(Testimony of Marino Crivello.)

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. Marino, you have pleaded guilty, like your brother, have you? I say you have pleaded guilty to this? A. Sure.

Q. And this story that you have told, has any Government officer threatened you in any manner to get you to tell it? A. No, sir.

Mr. RIORDAN.—That is all.

(Rep. Tr., pp. 287–288½.)

(Questions by Mr. COGHLAN.)

The boat that I own and operated during these various times was the "Marconi." It has been seized by the Government. I went to Vincent Quartararo, not to get my boat released from the Government, but for money that he owed me for my work. It is not a fact that I went to Quartararo and asked him to put up money or a bond or to secure for me the release in some way from the Government of [213] my boat the "Marconi" and that he refused to do it saying that there was no reason why he should do so. I did not ask him to do this, nor did I threaten him if he failed to so do, nor did I say that it would go hard with him. I have known Quartararo since 1915, and knew him when he was a member of the State Market Commission, when I would see him quite often at Fishermen's Wharf. I never had any trouble with Quartararo.

I was born in Porticello, Italy, and I am a Sicilian. My brother is also a Sicilian. Before

(Testimony of Marino Crivello.)

I pleaded guilty in this case I went to the custom-house and there saw Mr. Creighton and talked with him, and at that time my brother, Peter Crivello, acted as interpreter for me. I did not have any understanding with him down there as to what the Government would do for me if I pleaded guilty. Two men from the custom-house came to see us and then I went to the custom-house after my arrest. My boat was seized before my arrest and has been held by the Government since then, and after that I went to see my lawyer. Before I was arrested I went to the custom-house to see Mr. Creighton, and at that time I made a statement to him and thereupon told him that I didn't know anything. At that time I did not tell Mr. Creighton the truth. When Mr. Creighton called me the first time after my boat was seized I did not tell him the truth. I could not sleep any more after having told a falsehood to Mr. Creighton and one night I dreamed that they had put me in jail because I had told a falsehood, and in my dream I dreamed that my seven children were all crying because I was in jail, and a short while after that I went to Mr. Creighton and I told him the truth. That was before I came in here in court and pleated not guilty. After that I came into this court and pleaded not guilty. I first talked to Mr. Creighton about this thing in the month of January, and that was after I was indicted. The first time I talked to Mr. Creighton [214] I told him the story; the next time

(Testimony of Marino Crivello.)

I told him the truth. The first conversation with Mr. Creighton was in 1924 when I told him the story. The second was in January, 1925, when I told him the truth. The second conversation I had with Mr. Creighton took place in the custom-house; that was after the dream that I had. I then, after I had talked to Mr. Creighton, went to see a lawyer. I am not sure but I think that was in the month of January.

The reason that I went to see Mr. Creighton is that I had dreamt about it and was afraid I would be put in jail. I do not believe that a person telling the truth would be sent to jail. I did not come here in the hopes that by testifying I would not go to jail, I came here to tell the truth. I don't know whether I will be treated leniently and mildly because I came here and testified. Nobody has made me any promise that I would be dealt with leniently because I testified. I don't know what they are going to do with me, but I am here to tell the truth, and what they do to me they will do to me. I went to the custom-house alone and then afterwards I went to the attorney. I have talked to my attorney, Mr. Morris. I went there for advice as to what to do. I was advised by him to plead guilty and testify for the Government in this case, and that probably the Government would deal more leniently with me.

Up to the 15th of September I was fishing for salmon, and on that day the fishing season closed. At that time I was working for all the markets,

(Testimony of Marino Crivello.)

fishing. So that until the 15th day of September I did not carry any load of liquor. I don't know but I think that it was around the 18th, 19th or 20th of September that I first went to the Bohemian Cocktail Supply Company. It was somewhere around that time that Vincent Quartararo telephoned me, but I have no way of fixing the date, nor do I remember the day of the week the 15 of September fell on. I don't know whether it was Monday or not; nor do I know whether it was the same week that I stopped fishing that I received this telephone message. [215] I think it was four or five days after the fishing season was closed, and to the best of my recollection it was around the 19th of September. I cleaned up my boat and fixed my nets before I received the telephone message. I just made an estimate of the time, I don't remember exactly.

Mr. COGHLAN.—Q. Was it upon the same day that you received this message that you went out to these ships that you have spoken about, the "Quadra" and the "Malahat."

A. Yes. I didn't have anybody with me on the boat besides my brother, Peter. I think it was about 14 or 16 days that I did this work between the "Quadra" and the "Malahat." I don't remember the last day that I was engaged in this business, but it was around the latter part of September or the last part of October. It was about the latter part of September or the first of October. The last date that I was down to the

(Testimony of Marino Crivello.)

custom-house was in January. I do not remember the date. It was about the latter part of September or the first of October that I finished the work on the "Quadra" and the "Malahat." I am not certain but I think I worked about 13 or 14 days, or thereabouts carrying this contraband to and fro. I did not keep any books on it, nor have I any receipts or papers that would indicate it.

It is no affair of yours whether I have been convicted of something or not. I will say that I have never been convicted of a felony under the United States laws; I have never been in trouble. I have never been brought into court and charged with smuggling Chinese into this country, nor was I ever convicted of it.

(Questions by Mr. GREEN.)

I am a brother of Sam Crivello who testified here yesterday. My brother last fall operated the motor-boat "California." When I was out there I saw my brother there in the "California." The "Quadra" was out there at the time I saw him in the "California," and that was after I first spoke to C. H. I never heard of a man named "Phil Brockman," nor did I ever talk to him in an apartment about [216] this business. The first time I saw C. H. in the Bohemian Cocktail place I was alone. I talked to C. H. in the English language.

(Re. Tr., pp. 278–305 incl.)

TESTIMONY OF JOHN A. REED, FOR THE UNITED STATES.

JOHN A. REED, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is John A. Reed. I am a police officer of the city and county of San Francisco, assigned to the city prison detail, and was such on October 11, 1924. This record that I have here is the record of the arrests of the police department of the city and county of San Francisco, and I am the custodian of the same.

Whereupon it was stipulated by and between counsel for the Government and counsel for the respective defendants that the defendants Allen and Nielsen were the same persons who were arrested on October 11th on board the motor-boat "903–B." And it was further stipulated that the defendants McKenzie and Pensotti were the same persons taken from the motor-boat "C–55" on October 12th, 1924.

Mr. FAULKNER.—As to the 23 officers and members of the "Quadra" indicted, it is stipulated that they are in court with the exception of Mr. McLennon.

(Rep. Tr., pp. 305–307.)

TESTIMONY OF E. O. HEINRICH, FOR THE *UNITED STATES.*

E. O. HEINRICH, a witness called on behalf of the United States, first being duly sworn, testified as follows:

My name is E. O. Heinrich and I am an examiner of suspected and disputed documents, practicing on a basis of legal chemistry and microscopy. My office is at 24 California Street, San Francisco. My residence and laboratory is at 1001 Oxford Street, Berkeley. I am a graduate of the University of California, Department of Chemistry. [217] I was called into consultation in this case by the office of the United States district attorney. I have attended courts as a witness on the question of handwriting, in the federal courts of the Northern District of California, the Western District of Washington, the District of Nevada, the United States Army Courts of the Western Department, in the State Superior Courts in every State of the west except Wyoming and New Mexico. I have been practicing my profession for about thirteen years, and I am a member of the Summer Session Faculty of the University of California, and have since 1917 been giving lectures there on criminal investigation. My researches and experience cover all classes of disputed handwriting.

I have examined Government's Exhibit No. 6 and have determined in whose handwriting the entries in that book were made. I have also ex-

(Testimony of E. O. Heinrich.)

amined Government's Exhibit No. 17 and I have determined in whose handwriting that was written. I have examined Government's Exhibits No. 30 to 36 inclusive, and have determined in whose handwriting the markings or writing on the reverse side of the bills was written. In coming to the determination with respect to whose handwriting these various instruments were written, I have used Government's Exhibits 19, 39, 38, 41, 40, 42 and 37, as exemplars. After an examination of the exhibits heretofore shown me, I have arrived at an opinion and conclusion as to who wrote or made the writing on Government's Exhibit No. 6.

Mr. GILLIS.—Q. In your opinion, from an examination of these exhibits, who wrote the several pages upon which writing appears, the writing in that exhibits? In your opinion who wrote it?

Mr. GREEN.—If the Court please, it is apparent that the only way that handwriting can be proven by an expert is by comparison of the disputed document with an admitted or proved exemplar of [218] the person's handwriting, and as far as this book is concerned we have before this Court no admitted or proven exemplar of the person's handwriting.

The COURT.—Well, you are assuming, Mr. Green, I presume that that was written by the ship's husband, aren't you?

Mr. GREEN.—Written by somebody.

The COURT.—Suppose he testifies it was written by Mr. Quartararo?

Mr. GREEN.—I can't assume that.

The COURT.—The only signature of the ship's husband appears on what?

Mr. GILLIS.—On the shipping article—on the ship's articles.

Mr. GREEN.—And that is not proven.

The COURT.—The shipping articles are in every respect the articles as fixed by the *statue* of the Dominion of Canada and the regulations of shipping men in connection therewith; in other words, where a man's name purports to be signed to the articles as a member of the crew in any capacity, even supercargo or ship's husband, the authorities are unanimous that in the absence of evidence to the contrary he is presumed to have signed it. It has been held even to be a basis, in the absence of other proof, to sustain a charge of desertion. It has been universally so held by the courts of both England and Canada.

Mr. GREEN.—I would have no objection to the witness testifying that in his opinion the person who wrote the entries in that book is the person who wrote the name in here; but I don't see how he can go any further than that, your Honor.

The COURT.—He is not asking him to go any further than that.

Mr. GREEN.—He is asking him who. The question "Who" means [219] to name a person.

The COURT.—Perhaps you had better phrase the question differently. In effect what he is asking for, Mr. Green, is simply this: Who in his opinion wrote that log. That is all he is asking him.

Mr. GILLIS.—That is all I am asking him. It is a perfectly proper question, so far as the question is concerned.

Mr. FAULKNER.—May I supplement Mr. Green's objection in this: Your Honor indicated that this instrument was an instrument that was kept under the laws of the Dominion of Canada. The Court cannot take judicial knowledge of the laws of the Dominion of Canada. It is an instrument that is not subscribed to by any official, and the burden of proof is on Mr. Gillis.

The COURT.—Well, if you want Mr. Gillis to put in evidence the laws of the Dominion of Canada I presume he can do so.

Mr. FAULKNER.—Yes, we ask for that.

Mr. GILLIS.—I wish however to call the Court's attention to this, that when these articles were turned over to the Customs officials they were there turned over by Captain Ford who said they were the ship's articles, with the crew.

Mr. FAULKNER.—Yes, that is true.

The COURT.—The objection overruled.

Mr FAULKNER.—Exception.

Mr. GREEN.—Your Honor, might I object to the form of the question? I believe the only question that can be asked the handwriting expert in this connection is, "In your opinion was the

(Testimony of E. O. Heinrich.)

exhibit shown written by the same person who wrote the name upon that list?"

The COURT.—I will permit the question in its present form.

Mr. GREEN.—Exception. [220]

Mr. COUGHLAN.—We object to the question, your Honor, upon the ground that it is the rule that all that an expert can testify to is that the two exhibits that are given to him are, in his opinion, in the same handwriting.

Mr. GILLIS.—That would be impossible where there are a number of names on the one exhibit.

The COURT.—The rule is not so narrow as tha, Mr. Coghlan. Objection overruled.

Mr. COGHLAN.—Exception.

Mr. GREEN.—I also object to it on the ground that it was seized and is being used in violation of the rights of the defendants under the Fourth and Fifth Amendments to the Constitution; it is an attempt to make a man a witness against himself.

Mr. GILLIS.—Are you making that objection in behalf of Mr. McLennan.

Mr. GREEN.—No, it is on behalf of the other defendants.

The COURT.—I think the objection would be good as to any of them so far as that particular paper is concerned, but I will overrule the objection.

Mr. GREEN.—Exception.

(Rep. Tr., pp. 309–312.)

A. The same person wrote this log, with the ex-

(Testimony of E. O. Heinrich.)

ception of the writing identified on the pages as one, two, three, four and so on, in red ink, and with exception of the writing on page five, as signed the ship's articles, which are People's Exhibit 19, with the name "J. A. McLennan" followed by the words "Port Hastings, Vancouver, Coal Harbour." The writing in Government's Exhibit No. 6 to which I particularly refer is as follows: The three lines on the upper right-hand corner of page one, all of the writing appearing in pencil on page two, all of the writing appearing in [221] pencil on page three, all of the writing appearing in pencil on page 40, 41, 42, 43, 44 and 45.

Mr. GILLIS.—Q. Showing you Government's Exhibit 17, after an examination of the several exhibits heretofore shown you, have you formed an opinion as to who wrote the entries in that book?

Mr. GREEN.—The same objection, as heretofore made.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. Yes.

(Rep. Tr., pp. 312, 313.)

In my opinion, all of the writing in Government's Exhibit No. 17, which begins with the entry dated Monday, August 25, and lies between and concludes with the entry of Monday, the 13th, 33d day, was written by the same person who wrote the name on the ship's articles, Govern-

(Testimony of E. O. Heinrich.)

ment's Exhibit 19, on page 4, line 21, "J. H. Mason, London."

The COURT.—Is J. H. Mason a defendant?

Mr. GREEN.—Yes, your Honor.

Mr. GILLIS.—J. H. Mason is a defendant, yes, your Honor.

Q. Showing you Government's Exhibit 30, Mr. Heinrich, have you formed an opinion as to who did the printing in ink on the back of these several one-dollar bills?

Mr. COGHLAN.—We object to that. That is not a fair question. It is not material, relevant or competent. It has not proper foundation, as obviously appears from the face of the bills themselves.

The COURT.—I don't understand that, Mr. Coghlan.

Mr. COGHLAN.—Well, it obviously appears upon those bills that they could never have had anything to do with the "Quadra" and there is not anything in the record that indicates that they could have had anything to do with the "Malahat." Doesn't it? [222] You have read those—what I called endorsements there. There is not an item upon those bills that affects—I don't want to be accused of making a speech to the jury—that affects the question of what was taken on any of those alleged expeditions from any of the ships that have been named up to this time.

Mr. GILLIS.—That would be impossible to determine until the opinion of the witness is given.

The COURT.—Your point is that it refers to a different kind of merchandise?

Mr. COGHLAN.—It does indeed, and I think that is a proper initial objection. Wouldn't that be conclusive, your Honor, if it appeared to the Court that this had to do with another transaction?

The COURT.—It might and it might not.

Mr. COGHLAN.—We are trying these defendants for a conspiracy which is defined or which they have attempted to define in the indictment.

The COURT.—I have heretofore cited you to the case of People against Gray. I think you are even at large as to the fact.

Mr. COGHLAN.—I am not infallible.

The COURT.—I am not a particular expert on these things.

Mr. COGHLAN.—I can imagine that when your Honor was a practicing lawyer that bills of that size very seldom came to your attention.

The COURT.—I don't know about that. I will overrule the objection.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We object particularly that it could not under any phase of the law as your Honor conceives it to be, be binding on the defendants other than as the impression that this [223] witness might indicate he has that they are in a certain handwriting.

The COURT.—That might well be so. You know the rule, however, Mr. Faulkner. That rule is that

a statement made during the conspiracy is binding upon all.

Mr. FAULKNER.—Concerning a conspiracy.

The COURT.—And if it is a statement made after a conspiracy, that it is binding upon the person making it.

Mr. FAULKNER.—Yes, your Honor, if it concerns the conspiracy.

The COURT.—Yes. If the statements appearing on the back of these bills do not concern the conspiracy which is charged here it is hard for me to imagine what could.

Mr. COGHLAN.—Your Honor has read what I call the endorsements?

The COURT.—I have.

Mr. FAULKNER.—Your Honor, how could any endorsement from those bills referring to the "Malahat" or any ship your Honor might have in mind be binding on the officers and members of the crew of the "Quadra"?

The COURT.—I don't know, Mr. Faulkner, but I do know that if it does not the jury will be properly instructed. But at any rate, from any point of view, it is admissible as the opinion of the witness, which the jury may accept or not, as they see fit, as binding upon the person the witness may answer made those entries, if that person happens to be a defendant here.

Mr. FAULKNER.—Your Honor will give appropriate instructions to protect the rights of the rest of the defendants?

(Testimony of E. O. Heinrich.)

The COURT.—I will when I get to it. It may be abundantly established, even to the satisfaction of you gentlemen, that it does concern the immediate conspiracy charged. It may not; if not, [224] I will properly instruct the jury.

Mr. COGHLAN.—Your Honor will permit us to reserve the right to move to strike, of course?

The COURT.—Of course. So now you may answer, Mr. Heinrich.

A. Yes.

Mr. GILLIS.—Q. What is that opinion?

Mr. COGHLAN.—There is another objection that just has been called to my attention. I don't know to what matter his attention has been called particularly, your Honor.

Mr. GILLIS.—It is in the record, Mr. Coghlan.

Mr. COGHLAN.—Well, all right. Then I offer the further objection that the question is not such a question as will elicit an intelligent answer.

Mr. GILLIS.—I will withdraw the question and put it again.

Q. Mr. Heinrich, in your opinion, who wrote or printed the items on the back of the one dollar bills which go to make up Government's Exhibit 30?

Mr. COGHLAN.—We offer the same objections again, the proper foundation has not been laid, it is not material, relevant or competent and it calls for the opinion of the witness upon a matter that he cannot—well, the bills are not in evidence, so far as that is concerned. There has been absolutely no foundation. There is nothing here to indicate—and

(Testimony of E. O. Heinrich.)

that is one of the fundamental objections—that these bills were ever used in connection with any of these transactions with which your Honor has become familiar through the lips of the witnesses who have been brought to the witness-stand here—absolutely nothing but a statement by the district attorney. [225]

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We make the same objection that your Honor sustained a moment ago, that he cannot testify who wrote them, he can only testify that the handwriting that he has now and is examining is similar to certain other handwriting.

The COURT.—No, he can do more than that. He can give his opinion with regard to the person who wrote it, if there are exemplars before the Court of the handwriting of that person. You may answer the question.

Mr. FAULKNER.—Exception.

A. They were written by the same person, written and printed by the same person who has written the substance and signature of the exemplars, Government's Exhibits 39 and 40, and who has written the name "V" or "Vincent Quartararo" as it appears on Government's Exhibits 38, 41, 42 and 37.

Q. I show you Government's Exhibit No. 33, consisting of several $1 bills, and ask you if you have formed an opinion as to who wrote the writing in ink on the back of those $1 bills? A. Yes.

Q. And, in your opinion, Mr. Heinrich, who was

(Testimony of E. O. Heinrich.)

the individual who wrote the writing in ink on the back of this $1 bill, Government's Exhibit 33?

Mr. GREEN.—The same objection on behalf of all of the defendants.

The COURT.—The same ruling.

Mr. GREEN.—Exception.

A. The same person that I have described as having written the previous exhibit, and named in these exemplars as V. Quartararo.

Mr. GILLIS.—Q. I show you Government's Exhibit No. 34, [226] and ask you if you have formed an opinion as to who wrote the writing in ink on the reverse side appearing on one of those bills of that exhibit?

Mr. COGHLAN.—What is that exhibit?

Mr. GILLIS.—34.

A. Yes.

Q. And, in your opinion, who wrote the writing in ink appearing upon it?

Mr. COGHLAN.—Which one of those bills is that?

Mr. GILLIS.—On one of these bills; there is only one bill in that exhibit where writing appears.

A. It is A23697110B.

Q. In your opinion, who wrote that?

A. The same person that I have heretofore described as appearing in these exemplars, "V. Quartararo."

The COURT.—Let me see that, please.

Mr. GILLIS.—Q. Have you also examined those bills in that particular exhibit, Government's Ex-

(Testimony of E. O. Heinrich.)

hibit 34, to determine whether or not the remaining bills—withdraw that. Have you examined Government's Exhibit 34 to determine whether or not the typewriting on the several bills in that exhibit was made and written by the same typewriter that wrote the typewriting on the reverse side of the one bill upon which there appears the writing in ink?

Mr. FAULKNER.—The same objection, with the additional objection that he has not qualified as a typewriting expert yet.

The COURT.—I think he is qualified. Objection overruled.

Mr. FAULKNER.—Exception.

A. I have.

Mr. GILLIS.—Q. In your opinion, is all of that typewriting on the several bills made by the same or by a different [227] typewriter?

A. The writing on the back in red ink is all made on one and the same typewriter.

Q. I now ask you to examine Government's Exhibit 35 and ask you if you have formed an opinion as to who did the printing in indelible ink on the reverse side of that $1 bill in that exhibit?

A. The same person whom I have heretofore described as being named in the exemplars as V. Quartararo.

Mr. GREEN.—The same objection on behalf of all of the defendants, if it may be interposed prior to the answer.

The COURT.—Yes; the same ruling.

Mr. GREEN.—Exception.

(Testimony of E. O. Heinrich.)

Mr. GILLIS.—Q. I show you Government's Exhibit 36, and ask you if you have examined the several bills in that exhibit to determine who wrote the writing in ink on the reverse side of those several bills?

Mr. GREEN.—The same objection.

The COURT.—The same ruling.

Mr. GREEN.—Exception.

A. What is the question?

Mr. GILLIS.—Q. If you have formed an opinion as to who wrote the writing on the reverse side of the bills in that exhibit? A. Yes.

Q. In your opinion, who wrote it?

A. The same person as is named in these exemplars, V. Quartararo.

Mr. GILLIS.—I now, may it please the Court, offer in evidence Government's Exhibit No. 30 and ask that it be marked Government's Exhibit 30 in evidence.

Mr. COGHLAN.—We object to it on the ground that there is absolutely no connection between it and anything else that has been heretofore introduced in evidence, except some testimony of this [228] witness, it is not relevant, material or competent, that there is no proper foundation offered for it, and that it affirmatively shows it has nothing to do with any issue raised by the pleas of not guilty and the indictment.

The COURT.—It is overruled.

Mr. GREEN.—On behalf of all defendants ex-

cept Quartararo it is objected to on the ground it is hearsay.

The COURT.—Overruled.

Mr. GREEN.—Exception.

Mr. COGHLAN.—We object to it also on the ground that it is hearsay on the part of Mr. Quartararo.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—It may be received in evidence, your Honor?

The COURT.—Yes.

Mr. GILLIS.—I offer Government's Exhibit 33, which has heretofore been introduced for identification, and ask that it be received in evidence.

Mr. GREEN.—The same objection.

Mr. COGHLAN.—The same objection on the part of Mr. Quartararo and all of the other defendants.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 34, and ask that it be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 35 for identification, and ask that it be received in evidence. [229]

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

(Testimony of E. O. Heinrich.)

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I offer in evidence Government's Exhibit No. 36 for identification and ask that that be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—I now offer in evidence, may it please the Court, Government's Exhibit No. 32, which has heretofore been introduced for identification and ask that it be received in evidence.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Also Government's Exhibit No. 31, I ask that that be now received in evidence.

Mr. COGHLAN.—Also the same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. Mr. Heinrich, in forming your opinion, and for the purposes of illustration, have you made certain charts and illustrations?

A. Yes.

Q. Will you explain how you arrived at each of the several conclusions as to the handwriting that you have just testified to, using the illustrations that you have made?

Mr. FAULKNER.—We object to it as immaterial, irrelevant and incompetent, the instruments are already in evidence, and if these facts should be brought out, it is the burden of the defense on

cross-examination; it serves no purpose now, once the instruments are in evidence. [230]

The COURT.—The Court of Appeals in the case of 16 to 1 Mining Co. vs. The 21 Mining Co. held distinctly that an expert who had given his opinion could be asked as to the reasons for it.

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That was, as you will recall, a moot point prior to the decision in that case. The question involved there was the testimony of Prof. Lawson with regard to the identity of a certain vein below and above a certain fault. He testified that it was, and the next question asked was what his reasons were.

Mr. FAULKNER.—Precisely.

The COURT.—And it was objected to on the ground that it was a subject for cross-examination.

Mr. FAULKNER.—But, if your Honor please, the distinction the vital distinction between that opinion and this is that the acceptability of these instruments in evidence must rise or fall upon the qualifications given by the witness before they were offered and accepted in evidence.

The COURT.—The same thing would apply, and it has become familiar practice in this court and in the state courts, that a mere statement of opinion, as the Court of Appeals pointed out there, and the Supreme Court of California pointed out in the Vallejo Northern Case, that a mere statement of opinion with regard to a thing might leave the jury cold as to whether they were going to believe it or

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(Testimony of E. O. Heinrich.)

not; but if the person who was testifying as an expert gave reasons for that opinion, and that appealed to the intelligence of the jury, it would be a very different situation.

Mr. FAULKNER.—Suppose that this witness, in giving his reasons which resulted in his opinion, described this opinion, the court has already admitted the instruments in evidence. [231]

The COURT.—I know, but I have plenty of power to strike it out. Are you going to put these up, Mr. Heinrich?

The WITNESS.—Yes.

(Thereupon a short recess was taken.)

Mr. GILLIS.—Q. Mr. Heinrich, before giving the reasons for the conclusions which you have come to, as just testified, I will show you exhibit for identification—Government's Exhibit No. 28, and ask you if you have examined that with the other exhibits in this case to determine in whose handwriting the name written on the page "J. H. Mason" and "J. A. McLennon" were written in?

A. I have.

Q. In your opinion, in whose handwriting were each of those names mentioned?

Mr. FAULKNER.—I submit that has already been asked and answered.

The COURT.—No, this is the hotel register.

Mr. FAULKNER.—Pardon me, I thought he handed him something else.

Mr. GILLIS.—No.

Mr. FAULKNER.—The same objection to the

hotel register that we made at the time the ship's register was offered to the witness, if the Court pleases.

The COURT.—I am inclined to think that is good, Mr. Gillis. I cannot see the materiality of these entries in the hotel register.

Mr. GILLIS.—They were simply used in arriving at his conclusions, showing the different characteristics of the handwriting of the names.

Mr. FAULKNER.—You will remember, Mr. Gillis, that you were unable to identify the hotel register.

Mr. GILLIS.—That is why I only offered it in evidence for identification. It was not offered in evidence. I am simply [232] asking him now to identify the names in there.

The COURT.—But in order to use that in any wise for exemplification it would have to be shown that that was in the handwriting of the persons involved.

Mr. GILLIS.—That is what I am showing and if there happens to appear in this particular instrument certain characteristics that he works from he may use that after identifying it with the original.

The COURT.—I think that is putting the cart before the horse, the way it seems to me. In other words, an expert takes exemplars of handwriting and then on those exemplars he arrives at an opinion as to disputed handwriting; then having arrived at the opinion as to the disputed handwriting he

(Testimony of E. O. Heinrich.)

could not use the disputed handwriting as an exemplar upon which to base his opinion as to another.

Mr. GILLIS.—Only if this state of facts occurred: There may be certain figures and letters made on the exemplar and upon this document which are commonly characteristic and which do not appear upon the questioned document. There may be then figures or letters which are characteristic to the questioned document and this instrument which do not appear in the exemplar.

The COURT.—That is really another way of stating just what I have said. I will sustain the objection.

Mr. GILLIS.—Q. Will you continue, Mr. Heinrichs?

A. (Continuing.) I will take up first Government's Exhibit 17, which is the mate's log-book and concerning which I have testified that it was my opinion that all of these entries lying between August 25 and October 12 were written by one and the same persons. Looking at the writing first independently of a comparison with any exemplar, and comparing the pages with each other I find that they run uniformly, as shown by the specimen that I have placed on [233] the board of a comparison of the entry appearing opposite the date "August 25." This entry begins with the name "J. H. Mason joined the ship as chief engineer," and continues in the form of a running diary until the record closes—

Q. Before you continue, Mr. Heinrich, may I

(Testimony of E. O. Heinrich.)

ask that you mark the illustration that you are using 43, and the next one 44.

A. Yes. The question of identifying the several pages with each other I find to be entirely a matter of checking out the continuity of the writing quality, the manner of making the connections and the manner of making the capitals and their proportions to the small letters. Starting first with the "J" as we have it in "J. J. Anderson" and "J. H. Mason," and taking up the other capitals as they run along in these first two lines and as the other letters are picked up, and tracing them right through the pages, for example, as indicative of the manner done, in the third line I pick up the capital "W"; on the ninth line of the writing I pick up the capital "W" and find that we have the same flat feature at the base which identifies the letter of that particular writer. So all through the writing. I found it to be entirely regular and normal without any wandering movements indicative of dissimulation or disguise; for that reason I confined myself in comparing it with the exemplars, the ship's articles, to making a comparison of the name "J. H. Mason" which appears as the very first word in the mate's log on the first line after the date, and which is a complete specimen or a regular normal specimen of all of the writing which lies between August 25 and October 12. On the exhibit which is marked 44, the upper name is "J. H. Mason," is an enlargement of the name "J. H. Mason" as it appears on the mate's log following the date "August

(Testimony of E. O. Heinrich.)

25." Immediately below it is the name "J. H. Mason" as it is signed on the ship's articles, which are Government's Exhibit 19. There [234] the most comprehensive statement I can make concerning this writing of these two names is but I can find absolutely no characteristic differences from every point of view from which I have considered these signatures; from the point of view of formation of capitals, of the proportion of the spaces apart, from the upper loop of the "j" to the lower loop of the "j," the manner of running into the "h," the manner of dropping the stroke at the first tip of the "h" and going over to the second tip of the "h," and connecting it with the "m"; the shortening of the first and second shoulders of the "m," and the writing pressure in going over the tip of the "m," the manner of disconnection between the "m" and the following "a"; the oversize of the "a" as compared with the "s"; the collapse of the "o" as compared with the ovality of the "a"; and the general slurring off of the "n" into a horizontal movement ending in a sharp abrupt upward stroke. All of those in every particular, writing pressure, formation, spacing, proportion, and so on, those two writings are identical. There are no characteristic differences. For this reason I came to the conclusion that I have expressed as my opinion, that the same J. H. Mason who signed the ship's articles is the same J. H. Mason who kept the mate's log and who started it August 25, 1924, and continued it through to October 12.

(Testimony of E. O. Heinrich.)

Taking up the log, which is Government's Exhibit 6 in this case, we have there with respect to the different pages I have enumerated a similar situation as to the regularity of the writing from the beginning to the end.

Q. Before you continue, Mr. Heinrich, have you finished with these two? A. Yes.

Mr. GILLIS.—If the Court please, may I ask that the two illustrations, 43 and 44, be introduced in evidence and marked Government's Exhibits 43 and 44? [235]

Mr. FAULKNER.—We object as immaterial, irrelevant and incompetent; the testimony is in.

The COURT.—I will overrule the objection.

A. (Continuing.) The writing in Government's Exhibit 6 is entirely normal, characteristic of the writer, without dissimulation or disguise, and has that regularity which leads me to regard it as the writing done under ordinary conditions of keeping such a set of records. This writing is of a peculiar individual character which at once identifies the writer when this writing is compared with similar specimens of his writing. I want to show first one page of that writing, a complete page.

Mr. GILLIS.—Q. You can number that "45."

A. The exhibit which I have marked 45 is a representation of page 41 of Government's Exhibit 6. It has entries covering the dates September 17 to September 23, inclusive. The particular feature of that writing which identifies it as the work of a particular individual is the expression throughout

(Testimony of E. O. Heinrich.)

the writing of what looks like a tremor; it is not a tremor, strictly speaking, but is the exemplification of a disquality or a stiffness in the writer's fingers and thumb which caused the oval members to be made in angular breaks which produce an angular character to the writing. All of the writing in this book of this writer shows, when we consider the oval movements, that the writer's thumb does not co-ordinate properly with the fingers; it is weakest on the retreat movements, in which the fingers are the dominating movement, or the downstroke, and is strongest on the movements to the right, or the right oblique upward, where the thumb dominates. The result is that on oval movements this writer instead of a curve makes his ovals with a hexagon. These sharp angles in making a complete oval are very clearly defined; and on other occasions some of them are clearly defined and others will take the form of a [236] curve either on the outside or the inside of the corner about which the co-ordination between the finger and the thumb is taking place. I have a specimen now on the board which I will mark 46 on which this particular feature I have just described is illustrated in a clear way.

Mr. FAULKNER.—If the Court please I object to the witness indicating or making any reference to the exhibit he is now pointing to upon the ground that, as I recall it, this particular instrument was excluded from evidence.

The COURT.—What is that?

Mr. FAULKNER.—That is a copy of a cargo

(Testimony of E. O. Heinrich.)

list. Your Honor ruled that a copy of an official list would not be admissible in evidence. That is my recollection.

The COURT.—That is quite true, I think.

Mr. GILLIS.—I think your Honor's ruling went to the point that it could not prove the cargo aboard the "Quadra"; in other words, that it was not an official manifest of the list of articles which constituted the cargo of the "Quadra."

The COURT.—That is clearly what I had in mind. It might be an exemplar of handwriting just the same. I think that so long as it has been excluded I will sustain the objection.

A. (Continuing.) Such point as I wish to show on 46, which I have removed from the board, I can call to your attention as clearly exhibited in the word "alongside" on line 6 of Exhibit 45. There we have the word beginning with an "a" and we have that oval formed there in the completely defined hexagon which I have called to your attention which is characteristic of this writer's circular movement. That portion on Exhibit 46 which is left off, removing some of it, I will place alongside; it is a portion of page one, the upper left-hand corner, and bears the name "J. A. McLennan." It is so small that the jury will [237] perhaps not see that, but I will put a larger one on in a moment or two. I wish to call attention to this, that this writing is in exact proportion as it appears in the book to the other writing. The writing on the ship's article is larger than this in the book

(Testimony of E. O. Heinrich.)

as the pages run along. In studying this in co-ordination difficulty which this writer has, it might be called a writer's infirmity due to stiffness of the hand based on overdevelopment of the muscles of the thumb and fingers for other work, this angular feature, the over-movement, runs throughout the writing, whether it is in very small writing, such as exhibited on 46, or in the larger writing shown on 45. I show this same name, or at least the exemplar name as it appears on Government's Exhibit 19; and there I wish to call particular attention to the manner in which the angular turning movement enter into the writing and prevent this writer from making a small oval curve. In the "a"—the "a" of the name "J. A. McLennan," the "a" starts with a wandering movement and comes to a point immediately above the center of the letter, at the top of its major axis; there the letter really starts, rises upwards, makes an angular turn obliquely downward to the left; the movement is carried to a point slightly below the central point, below the left of the minor axis, and so the co-ordination has been affected fairly well, only to be lost in reaching the bottom of the letter; the thumb in its inability to make the oval movement has forced the pen to make a wave to the right with an angular turn at the bottom where the change of direction occurs which finishes the letter as far as the oval is concerned. In turning the second oval closing the "a" we have again a diamond-shaped pattern instead of the smooth curves. This runs throughout this writ-

(Testimony of E. O. Heinrich.)

ing on all of the thumb strokes; the thumb strokes are the upstrokes. They are either deficient entirely as you see them in the "n" or they are of unusual likeness in comparison with the finger strokes; that is, the thumb [238] on the retreating movement is the weakest element of this writing but is one of the strongest elements on the horizontal movement to the right as is shown in the terminal of the word "McLennan." This is an identification of the person's habits based on the muscular construction of the hand, and is individual and is of an identifying character.

Mr. GILLIS.—Q. The sheet which you have been referring to, Mr. Heinrichs, will you mark that 47?

A. Yes. I have taken the writing as it appears in Government's Exhibit 19, the ship's articles, and compared it with similar groups which I selected from the log, Government's Exhibit 6. The first of these is a comparison of the words "Vancouver" and a comparison of the words "Coal Harbour." On the exhibit which I will mark 48, in each group I have at the top the word marked over on the right side, "S. A." as it appears on the ship's articles, Government's Exhibit No. 19. Below that are three examples found in Government's Exhibit 6. The first example, the word "Vancouver" is from page 40, line 2; the second example from page 3, line 1; the third example from page 2, line 1. With the word "Coal Harbour" the first one shown comes from the ship's articles, Government's Exhibit 6—

Mr. FAULKNER.—Just a moment. If your Honor please, the same objection to page 2 and page 3. He is now comparing signatures on an instrument excluded from evidence. Here is the book.

Mr. GILLIS.—I think that so far as that particular part of page 2 is concerned I can see no reason why that should not be admitted in evidence. It has no reference whatever to the cargo in any manner, shape or form. It is a writing in the book, the same as any other writing in the book.

Mr. FAULKNER.—Then it becomes immaterial, irrelevant and [239] incompetent because, as your Honor will recall, the book was entered in evidence and portions of it read to the jury upon the theory that it was a *quasi*-official record in connection with the "Quadra".

The COURT.—Yes, it was partly that but you will remember this book was found in the cabin of the supercargo on board the "Quadra" herself.

Mr. FAULKNER.—Yes, but in a position that could not identify it as an official log. You will remember that, too.

The COURT.—Yes. It was not necessarily so identified. I don't see that on page 2.

Mr. FAULKNER.—It is right on the top, your Honor.

The COURT.—The word "Vancouver"?

Mr. FAULKNER.—That part is not in evidence.

The COURT.—I will admit it in evidence now.

Mr. FAULKNER.—The one word?

The COURT.—So much as is necessary; that

(Testimony of E. O. Heinrich.)

part which does not have anything to do with the copy of the ship's manifest; that is, such part of it as has nothing to do with the cargo of the vessel, which purports to be a mere copy of the manifest will be admitted now for the sole purpose of comparison of handwriting.

Mr. FAULKNER.—Exception.

A. First, I wish to state that the ship's articles, Government's Exhibit 19, are written in ink, and Government's Exhibit 6 is written in pencil. To this extent, there is a difference between the writing of the two exhibits, that the pencil writing shows greater care of movement than the pen writing, but, other than that, the entire group, and the manner of formation of these undivided letters, proportion for proportion, are in complete agreement with each other. Take the group, "Vancouver," [240] as an illustration. We find, first, that the writer has broken in three of the four examples to the horizontal between the "n" and "c"; the line from the "n" points to the "c" and has the appearance of a connection, but it does not go clear around to the end. The word from "c" to "r" runs along as a complete group, and breaks on the "e" and "r" in such a way that the "er" is suddenly diminished over the formation "ouv", and the thumb takes a dominant part in the movement, and gives a horizontal terminal, or a terminal with that extra heavy pressure on the end of the line. In the exemplar from the ship's articles the terminal shows an extra pressure, such as shown in the example

(Testimony of E. O. Heinrich.)

on page 3, line 1, and in the example from page 40, line 2, it takes a horizontal form as we saw in the picture appearing on the ship's articles. The pattern of the capital and the position at which the thumb enters the stroke, and causes the final movement to break at a point at least the height of the "a" immediately following the "V" is identical here; the weight of the stroke of the first limb of the "V" as compared with the second is of an identical order. The hexagon feature of the "a" is shown very clearly in both the example from Exhibit 19 and particularly in the group from page 40, line 2. There we have a very clear demonstration of the inability of this writer to coordinate his thumb and finger sufficiently to make a smooth curve at will; he will frequently make smooth curves, but, as a matter of habit, the angular movement, the angular turns predominate. That is true all along the bases of the line; point for point, we have the same type of fault entering the line, and producing the same appearance, and the same effect on the writing, from any point in the writing to the next; the manner of the formation of the "a" shown in "Vancouver" taken from page 3, line 1, in which the initial portion of the "A" passes over [241] to the right side of that letter and forms a cap, is the same feature that we find in the signature where the inability to control the movement has resulted in almost a flourish. The limbs if the "n", or the shoulders of the "n" are separated in the same way, and "c" has the same

(Testimony of E. O. Heinrich.)

elevation in its proportion to the "n", the "n" being reduced in size between the "a" and the "c," in precisely the same proportion, and so on throughout the name. These same features appear again in "Coal Harbour." Here we have in the exemplar still greater difficulty in control of the writing instrument, which has resulted in a still more marked appearance of the pseudo tremor; the down strokes are very heavy; the light strokes are light in proportion, and formed without control; that same feature runs throughout the word "Coal Harbour." And again the same features of form and formation run through these words, and particularly calling your attention to the new letter introduced here, the capital "H," in the three example specimens taken from page 43 line 18, the word is over-written, or the word "Coal" has been written over the syllable "Van;" it appears from the context "Vancouver" was started to be written and was corrected to the word "Coal." Now, independently of minutia, the fact that all this writing is in the same writing system, that the proportions of the small letters to capitals are uniform throughout, and there are no eccentricities in the way of differences in pattern in any way in this writing, plus the extremely individual character of this incoordination effect, this pseudo tremor, which produces angles where we should have curves, and produces a hexagon on a complete oval, this is sufficient, in my judgment, to completely and fully identify the writer of the name on Exhibit

(Testimony of E. O. Heinrich.)

19, the ship's articles, as the writer of the log. Now, I will take that name and compare it with groups taken [242] from the ship's log, where we can see the manner in which these groups appear elsewhere.

Mr. GREEN.—If I might interrupt, I do not think it is quite fair the witness to insist on referring to this book as the ship's log. It has none of the earmarks of a ship's log, at all.

The COURT.—I do not think that does any harm, however, Mr. Green. Of course, the terms "log" is a very elastic term, as it applies to a ship; it is frequently used for any sort of a diary or narrative of events by anybody on board. It is perfectly apparent what it is, that it is a record kept by somebody.

Mr. GREEN.—A diary?

The COURT.—Yes, a diary. Of course, Gentlemen of the Jury, you are not to understand from anything said by this witness that the book to which he has referred is the official ship's log.

Mr. GILLIS.—Will you mark that sheet 49?

A. Yes.

The COURT.—I note also that I referred to Mr. McLennon as the supercargo or ship's husband, I think there has been no evidence of that. As denoted by the ship's articles, he was shipped as an A. B.

Mr. GREEN.—Yes.

The COURT.—So the jury will pay no atten-

(Testimony of E. O. Heinrich.)

tion to that. I thought he was shipped as supercargo.

Mr. GREEN.—I was going to call your Honor's attention to that, later, but I am glad that you noted it.

A. In addition to this "Coal Harbour" and "Vancourver" appearing on exhibit 19, there appear the words "Port Hastings" and the name "J. A. McLennon"; the name "J. A. McLennon" appearing on the exhibit 49 is the same as I have shown heretofore on exhibit 47. Now, here, we have a direct comparison of the manner of writing the name "J. A. McLennon" on exhibit 49 with the manner [243] in which it appears on page 1 of Government Exhibit 6. There are but two differences. The first is the difference in size. The name appearing in the book is written very small; the second is the difference in the writing instrument; the name of the book is written with a pencil, and the name on Government's Exhibit 19 is written with a pen. The first feature of identity is the individual development of the capitals. This writer, in making a "J" has developed a flying start, which is a down stroke; he starts above the line at a point about where the top of the letter belongs, drops to the line, and then turns without the formation of the loop and goes in an oblique direction to the left, and upward to the top of the letter, and brings the movement down into the formation of the lower loop of the "J," and it passes into the next letter. That is precisely what

(Testimony of E. O. Heinrich.)

we see in the formation of the "J" as it appears in Government's Exhibit 6. The "a" following has the characteristic hexagon feature, both on the oval, on the main oval, and on the eyelet which closes that letter, and the movement passes to the "M" with the same ratio of weakness of up stroke but heaviness of strength of down stroke that we saw in the "M" of the exemplar. The "c" following the "M" is developed in such a way that it appears without an analysis to be a part of the following letter "L." Here, again, we have an identity in the pattern, particularly in the direction of its deformation, the "L" running considerably below the line vertically instead of stopping at the base line and forming the oval on the base line. The formation of the "ennan" takes the same angular character with the tremors or angular breaks showing in the turning movement that we found throughout the name in the exemplar, and the same increase in weight, showing the domination of the thumb movement coming in the terminal. We find that same movement as a group, the latter part of "McLennan," express in the group "ennessy" from page [244] 2, line 27. The capital "M," so far as weakness of upstroke, the back hand slope of the letter, as a whole, and the extra weight of the downward movement is shown in the group "McKay"; also the hexagon form of the "c" in that group, as taken from page 2, line 7, as compared with the exemplar. Again, in the abbreviation "A. M." taken from page 45, line 22, and another example taken from page 43,

(Testimony of E. O. Heinrich.)

line 13; and here, again, I wish to call attention to the peculiar hexagon nature of these ovals. It is shown completely in the example "A. M." taken from page 43, lines 18.

Mr. FAULKNER.—If your Honor please, might I interrupt at this time; the reference of the witness to the word "Hennessy" will come in on this same ruling, that it is solely for the purpose of identification of the handwriting?

The COURT.—Yes. Is that from a part of the copy of the manifest?

Mr. FAULKNER.—Yes.

The COURT.—Yes, that may go in also, that word may go in, but only for the purpose, Gentlemen, of furnishing an exemplar of handwriting, and not as evidence of what the ship's cargo was.

A. This same dominance of the thumb in the movement to the right is shown in the "t" crossing in the work "Hastings;" the "t" crossing is suddenly turned in an upward direction and in the word "Port" it lies on an upward oblique line. Now, throughout this writing we have this same domination of thumb movement of a "t" crossing upward shown as exemplified in the specimens I have brought here from page 45, line 13. Considering the group "Port Hastings" and comparing it with other exemplars, I have brought here several illustrations of a similar group; we have in "Hastings" the group "ast," and in comparison with that I have brought the word "east"

(Testimony of E. O. Heinrich.)

from page 41, line 25, and page 41, line 14. There we have identity throughout of the movement from "a" [245] to the foot of the "t," including the upward trend of the "t" crossing and the open feature of the foot of the "t," the two limbs compared with each other being more open and extended than should be the case, according to the system standard. In comparison with the letter "p" of the word "Port," I have brought here the word "Pilgrim" from page 43, line 5, particularly to show the manner in which the angularity in making turning movements tends to depress the oval of the "P" into a triangle, both as shown in the word "Port" in the exemplar and in the word "Pilgrim" taken from the book. The capital "H" I have extracted in the word "Heavy" from page 44, line 18, and page 44, line 22, and in those words we have also the "y" which closes without the completion of the loop, and in most cases, such as in the words "strong easterly" taken from page 45, line 13, the loop is abandoned for a horizontal stroke to the left. I have also shown the "p" in comparison from page 42, line 4, with the word "Port," comparing it as a group with the words "Port Hastings." There we have a complete analogy or similarity between the group form from the beginning with the angularity of the oval of the "P" to the abrupt terminal stop of the "t." That is an indication of the manner in which I proceeded, and, as I stated before, the identification primarily rests upon the continuity throughout this writing

(Testimony of E. O. Heinrich.)

and the examplar of the inco-ordinating feature which I have described, and the complete harmony of these various individual forms of the individual letters and their combinations and groups. There are no distinctive characteristic dissimilarities anywhere between the exemplar writing and the questioned writing.

Now, with respect to the bills—

The COURT.—Just a moment.

Mr. GILLIS.—Before we adjourn, might I ask that the [246] sheets 45, 46, 47, 48 and 49 be introduced in evidence and marked as Government's exhibits in their order?

The COURT.—Yes.

Mr. GREEN.—Might I ask the district Attorney, through the Court, if the logs that I have asked for this morning have been brought into court yet?

Mr. GILLIS.—I have the logs here.

The COURT.—We will take an adjournment now until Tuesday morning at 10 o'clock.

(Tuesday, March 17, 1925.)

Direct Examination (resumed).

Mr. GILLIS.—Q. Handing you Government's Exhibits 30 to 36 inclusive, which are the one dollar bills, Mr. Heimrich, in arriving at your conclusions which you have already stated with reference to these bills, have you made any illustration to illustrate and reason and conclusions that you have come to?

(Testimony of E. O. Heinrich.)

A. No, sir; the writing is on money, legal tender of the United States, and I am not at liberty to photograph money.

Q. And that is the reason no photographs were taken of them? A. Yes.

Q. Will you examine these several exhibits and point out your reason for arriving at the conclusions which you have already testified to with reference to those bills?

A. May I have the exemplars, please.

Q. Yes.

A. The conclusion rests on the results obtained in a similar method followed in the examination of the other writing, that is, an examination into writing determined the manner in which the peculiar muscular co-ordination of the hand leaves its effect in the writing. This is a microscopic [247] examination and without photographic illustration and is very difficult to show. However, this writing on the bills and the printing on the bills is tagged in a characteristic way. There is common to the writing on the bills and the printing on the bills numbers in each case, it being a part of the phraseology and indicating qualities These numbers run along in units ranging from 5 to 500—5, 10, 20, 30, 40, 50, 75, 100, 200, 300, 400, 500. Those numbers, which end in zero, the hundreds which have the double cipher, and the multiples of ten, are all characteristic, several of them embodying the peculiar mannerism of this writer which is found in the exemplars—

Mr. COGHLAN.—Pardon me, but do I understand, your Honor please, that these bills were offered and received in evidence?

The COURT.—Yes.

Mr. GILLIS.—Yes, they are all in evidence.

Mr. COGHLAN.—Was there a limited purpose for their reception, for the purpose of comparison, or what?

Mr. GILLIS.—You mean the bills?

Mr. COGHLAN.—The bills.

Mr. GILLIS.—The bills were received in evidence for all purposes.

The COURT.—They were received generally.

Mr. COGHLAN.—We desire at this time, your Honor—and I think we need not object hereafter in addition to this—to object to the evidence which is now being adduced upon the ground it is not material, relevant or competent, on the ground that these bills have no foundation in the facts that have been up to this date adduced; that there is no evidence here which can be used as a predicate for their use in evidence in this manner, or, in fact, we claim for their reception in evidence at all upon the [248] general issue, because there is no evidence connecting them with any transaction affecting either the "Quadra" or the "Malahat" or any of the several small boats to which reference has been made here in the evidence, or any other source of intoxicating liquors claimed by the prosecution, and because these bills are in no way connected with any of the persons

(Testimony of E. O. Heinrich.)

claimed as conspirators here, or claimed to be conspirators by the prosecution, or persons having to do with the conspiracy charged; and because they have not been shown to have been used in connection with any alleged conspiracy, or any of the operations here claimed by the Government, or to have been used at all by any person here concerned as defendants, or any person unknown and claimed to be a conspirator, or in any manner to effect the purpose or object of the conspiracy alleged and claimed by the prosecution.

The COURT.—Objection overruled.

Mr. COGHLAN.—To which we reserve an exception.

A. The exemplars, Government's Exhibits 39 and 40, consist of checks, one check in each case. On an examination of the numbers and words written into these checks it appears that this writer has a manner of making the cipher or the letter "o" when that movement appears in script on a very large number of occasions, about half the total number of occasions, in such a way that the letter is commenced on the right side, makes the oval movement and has the terminal movement pass outside the initial movement in many cases; the initial movement being well below the central minor axis of the letter parallel to the base-line. In other cases the finishing stroke will pass just inside. The result of this manner of making the letter is particularly prominent where a double cipher or the double letter "o" occurs. In the one

(Testimony of E. O. Heinrich.)

check here we have the word "Roos Brothers" *which includes [249] the double* "o" and the movement passes—the first "o" is made after the movement described and then passes into the second "o" with a poorly defined change of direction from the first to the second and makes the change of movement into the second "o" with a reverse loop whose axis is parallel to the base-line and which again fails to close sharply and moves off into the other letter. Now, I find first that where we have such numbers on these bills as 100, 200, 300, 400, 500, that we have this peculiar combination. Where we have the number 50 appearing on the bills we have in many cases the "5" joined to the "o" in the same manner that we find the second "o" is joined to a preceding "o" where the double "o" or double cipher occur together. That feature is common to all these bills which have the double cipher and to practically all of the bills which have a zero preceded by a "5." That is true both for the bills which are filled out in script and also for the bills which are filled out with printing.

In exhibit 36 typical examples of such bills are the bills numbered "A23697161B" and which has on the back the quantities "400 pints" and "100 Plymouth." The bill "A23697160B"—

Mr. COGHLAN.—Just a moment, are those the printed numbers of the bills—just what are you reading?

(Testimony of E. O. Heinrich.)

A. Yes, the printed numbers, that is, the serial number of the bill. That last bill has the quantity "100 C. S. Highland Queen" written on it.

Another example carrying the group "50" as well as the group "100" as illustrated on the blackboard, is the bill which is marked "A23697145B" and which forms a part of the group Government's Exhibit 33. These numbers on those bills which are printed may be seen again in this peculiarly characteristic form on bill "A23697116B" which forms a part of Government's Exhibit No. 30 where we have the number "100" and the number "50" appearing as [250] described.

In addition to the common features of the numbers running throughout these bills the printing on the different bills compared with one another over those bills which vary in their appearance I have been enabled to check out on the formation of capitals, particularly the capital letter "G." The capital "G" in this series is peculiarly made in respect to its finishing stroke. In all the cases where the "G" is made the finishing stroke is a horizontal line whose movement is from right to left, with a second stroke running diagonally downward to the right, giving at that point of the letter a v-shape formation or an arrowhead pointing to the center of the letter.

The study of the manner of operating the pen and holding the pen was based on the determination of the points at which the pen nib crossed and recrossed each other. In making a circular move-

(Testimony of E. O. Heinrich.)

ment with a pen, because the pen is a two-pointed instrument and does not revolve in the hand, the path made in the paper by the nibs of the pen cross and recross each other. The position at which this crossing occurs determines the position of the hollow of the pen with respect to the base line of the paper or with respect to the palm of the hand, either being available as a datum or reference line; the weight on either one of the furrows determines the point or direction the pen was tilted. This writer in all cases on these bills holds the pen in such a way that the angle of reference or the angle of the hollow of the pen to the base line is approximately 40 degrees. The pen is held with the pen pointing over the elbow, away from the body, and it results in a form of writing which has a slope of approximately [251] 45 degrees with angular connections at the bases and angular turns over the tops of letters in the left to right direction. This manner of holding and operating the pen is identical both in the printing and the writing, and together with these individualisms in form which I have described serve to identify the writer of the different exhibits that I have enumerated as being the same as the writer of the exemplars Government's Exhibits 38, 40, 39—let me repeat, Government's Exhibits 39 and 40, which are the checks, and those portions of Government's Exhibits 38, 37, 41 and 42, which read "Vincent Quartararo" that name appearing as a signature to those exhibits.

Mr. GILLIS.—You may cross-examine.

Mr. COGHLAN.—No cross-examination.

(Rep. Tr., pp. 307–344.) [252]

Whereupon Volume 3, Section 152, part 3 of Chapter 13 of the Revised Statutes of Canada for 1906, which is headed, "An Act Respecting Shipping in Canada" was offered in evidence, which reads as follows:

"Engagement of Seamen and Agreement."

"152. The master of every Canadian home-trade ship of or above eighty tons registered tonnage shall enter into an agreement with every seaman whom he carries as one of his crew, in the manner hereinafter mentioned.

"2. Every such agreement shall be in form H, or as near thereto as circumstances permit, and shall be dated at the time of the first signature thereof, signed by the master before any seaman signs the same, and shall contain as terms thereof particulars of,—

"(a) the nature and, as far as practicable, the duration of the intended voyage or engagement;

"(b) the number and description of the crew, specifying how many are engaged as sailors;

"(c) the time at which each seaman is to be on board or to begin work;

"(d) The capacity in which each seaman is to serve;

"(e) the amount of wages which each seaman is to receive;

"(f) a scale of the provisions which are to be furnished to each seaman;

"(g) any regulations provided by form M as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct which the parties agree to adopt. R. S., c. 74, s. 25."

(Rep. Tr., pp. 346, 347.)

(Whereupon Certificate No. 5608, entitled Certificate of Incorporation of the Companies Act of Canada, of the Canadian-Mexican Shipping Co., Ltd., the certificate of the solicitor that all the [253] requirements of the Companies Act had been complied with, the memorandum of association of the Canadian-Mexico Shipping Co., Ltd., the annual report to May 15, 1922, made under the Companies Act of 1921, of the Canadian-Mexican Shipping Co., Ltd., the Annual Report under the Companies Act of 1921 to June 19, 1923, and the Annual Report of the Canadian-Mexican Shipping Co., Ltd., under the Companies Act of 1921, to June 20, 1924, duly certified, were offered in evidence on behalf of the Government, and were marked U. S. Exhibit 51.)

Mr. GILLIS.—The instruments in exhibit 51 have been certified to by the Registrar of Companies for the Province of British Columbia, to the effect that the copies here attached are true and correct copies of the originals, issued as required by the laws of the Province of British Columbia. Attached to that is the certificate of the Deputy

Provincial Secretary of the Province of British Columbia, setting forth the fact that the Registrar, Herbert Garrett, is the duly appointed registrar of the companies for that province, and that the signature and seal annexed to the instrument are the signature and seal of that individual as such registrar, and that he has in his custody the original documents of the Canadian-Mexican Shipping Co.; and attached to that is the certificate of George A. Bucklin, Consul of the United States of America, at Victoria, certifying the official status of the Deputy Provincial Secretary of the Province of British Columbia.

(Whereupon certified copies of the certificate of the Consolidated Exporters Corporation, Ltd., under the Companies Act of 1921, a memorandum of association of Consolidated Exporters Corporation, Ltd., a notice of change of directors dated December 1, 1924, showing a change as of June 2, 1924, the Annual Report of the Consolidated Exporters, Ltd., under the Companies Act to October 31, 1923, the Annual Report of the Consolidated Exporters, Ltd., to December 10, 1924, under the Companies Act of 1921, were offered in evidence.) [254] These instruments are certified by H. G. Garrett, the Registrar of Companies in the same manner in which exhibit 51 has been certified.

Mr. GILLIS.—I now offer these in evidence and ask that they be marked Government's exhibits next in order.

Mr. CROWLEY.—To the offer, if your Honor

please, we object upon each of the following grounds, severally and distinctly:

In addition to the objection that the indictment does not state facts sufficient to constitute any offense, we object on the ground that it is immaterial, irrelevant and incompetent, not within the issues, self-serving, hearsay, *res inter alios acta,* too remote from the time at issue, and not the best evidence.

There was and is no evidence showing or tending to show *prima facie,* or at all, the existence of the alleged conspiracy, or of any conspiracy, and there is no evidence showing or tending to [255] show that we were or are connected therewith, had any knowledge thereof, or participated therein.

There is no evidence or foundation to connect us with the instrument offered, or that we are personally or otherwise or at all responsible therefor, participated therein, or had any knowledge thereof, or that the same was made or kept under our direction, or with any knowledge concerning the same or its contents.

No foundation therefore has been laid as to us.

There was and is no foundation for the admission of this instrument in evidence.

There is no attestation or authentication thereof in due form of law, or as required by law, or at all; there was and is no warrant therefor under any federal statute, and no compliance with the requisites, if any, of the state statute, if any.

The said instrument was and is incomplete and not entire, specifically among other things in this,

that there is not contained therein the articles of association themselves issued, there is no evidence or certificate or attestation that the clerk or person mentioned was or is the legal custodian or keeper of said record, or of the original thereof, or had any right of custody thereof, or that said person had or has any authority to furnish any purported or authenticated copy thereof; there is no seal of the or any court annexed or attached to the purported certificate; there is no certificate of the Judge, or Chief Justice or presiding magistrate that the attestation purported to be made here is in due form.

It does not appear that the instrument is one which is authorized or provided for by the law of the land whence it comes; there is no proof of any foreign law or statute of such land, requiring such record or statement to be filed or recorded as an official or other duty; there is no proof as to the force or effect [256] or faith or credit, if any, said instrument has, if any, under said or any law or statute or usage in the courts of the place whence the instrument purports to come; nor is there any evidence or certificate under seal of the country or sovereign showing or tending to show that the same was or is a valid or subsisting document of such country or land; there is no certificate under the seal of said country or sovereign thereof; and the said purported consular's certificate was or is not evidence herein, and the same was and is invalid being without the, or any of the, stamps required by law; there is no evidence that this purported

copy is duly certified by the officer having the legal custody of the original or what under the law of said country or land was or is due certification or attestation thereof; the instrument offered is not the record of any court and is non judicial in its character.

We are prepared to defend that objection, your Honor.

The COURT.—Let me look at it.

Mr. FAULKNER.—If the Court please, I think, that for the purpose of the court in passing on this matter, Mr. Gillis should indicate the purposes for which it is offered.

The COURT.—If you will let me look at it maybe I can find out.

Mr. CROWLEY.—What your Honor is looking at now is the memorandum of association.

The COURT.—The objection is overruled.

Mr. FAULKNER.—If your Honor please, before the ruling is made may this be included as a part of the objection, the very cogent objection that it is immaterial, irrelevant and incompetent, the corporation set forth in the instrument not being a party of the conspiracy, not being connected by any evidence of conspiracy; and particularly on behalf of the defendant Bellanger that there is no [257] evidence in the record or offered in evidence that he was a director or had anything to do with the corporation at any time claimed in the indictment that a conspiracy existed.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor.

(U. S. Exhibit No. 51.)

(Rep. Tr., pp. 349–351.)

(Whereupon a certified copy of the report outwards from the port of Vancouver, British Columbia, of the steamship "Quadra" dated September 9, 1924, was offered in evidence.)

Mr. CROWLEY.—We make the same objection we have heretofore made, your Honor, being the last objection I personally made to the last offer.

Mr. FAULKNER.—The same objection in its entirety, and the further objection that it is full of erasures and several kinds of handwriting.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

(U. S. Exhibit No. 52.)

(Rep. Tr., p. 351.)

Whereupon the report outwards from the port of Vancouver, British Columbia, of the auxiliary schooner "Malahat," May 23, 1924, was offered in evidence. This copy was duly certified in the same manner as the other exhibits offered are certified.

Mr. CROWLEY.—We make the same objection as heretofore specifically and at length made to Exhibit No. 51.

Mr. FAULKNER.—We desire to supplement that, your Honor, the steamer "Malahat" is not a party to this conspiracy, and the evidence contained therein can only be binding upon certain of the [258] defendants that are connected with the "Malahat," and it would be immaterial, irrelevant

and incompetent and the proper foundation not laid as to any other defendant, particularly the officers and members of the crew of the "Quadra" and the defendant Bellanger.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—And also all of the other defendants.

Mr. COGHLAN.—We reserve an objection.

(U. S. Exhibit No. 53.)

(Rep. Tr., p. 352.)

(Whereupon the report outwards from the port of Vancouver, British Columbia, dated July 5, 1924, of the steamship "Coal Harbour" was offered in evidence by the prosecution.)

Mr. CROWLEY.—The same objection we have made at length to Exhibit No. 51.

The COURT.—Was there any evidence, Mr. Gillis, that any of these small boats transferred any liquor from the "Coal Harbour"?

Mr. GREEN.—No, your Honor.

Mr. GILLIS.—In connection with the "Coal Harbour" I simply wish to call your Honor's attention to this fact: That the records of McLennan's log, which have been admitted in evidence, of date October 6, read as follows: "Steamer 'Coal Harbour' in sight about ten A. M. transferred 232 cases Gordon Gin in boats from 'Coal Harbour.'"

The COURT.—Yes. Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 54.)

Thereupon the Government rested. [259]

Mr. FAULKNER.—I at this time, on behalf of all of the defendants, jointly and severally, move the Court to strike from the evidence exhibits 3, 4, 5, photos of the "Quadra," exhibit No. 6, the log of the "Quadra," photos 8 to 15, inclusive, of the "Quadra," the slip signed by some person whose handwriting could not be identified, exhibit 17, the mate's log—

The COURT.—It is not the mate's log, at all; it is the engine-room log. It is headed that way. As a matter of fact, it is the engine-room log.

Mr. FAULKNER.—That is the manner in which they offered the record.

The COURT.—I understand what you mean.

Mr. FAULKNER.—The certificate of registry, the ship's articles, the sacks of liquor, exhibits 20 and 21, the kegs of liquor, exhibits 22 and 23, the box of liquor, exhibit 24, order for box, exhibit 25, tags, exhibit 26, tag exhibit 27, exhibits 30 to 36, inclusive, the currency bills, and all of the exhibits showing large photostat copies of handwriting in connection with any book, document, or instrument seized from the "Quadra." The motion to exclude that particular evidence, if your Honor please, is based upon the announcement of the Court at the time that all of that evidence was permitted to go into the record subject to being connected up, on the theory that a conspiracy must be shown before any of the evidence would be admissible; on the further ground that as to the defendants, officers and members of the crew of the "Quadra," the

exhibits referred to, taken from the "Quadra," were seized in violation of the rights of the said defendants, under the Fourth and Fifth Amendments, that they were seized pursuant to an illegal arrest of these defendants, and should not, under any circumstances, be admissible in evidence. I supplement the grounds of this motion [260] in particular by all of the grounds urged to your Honor on the motion to suppress and exclude evidence.

Now, then, the Court will, in that regard, have in mind that under the law the seizure of the "Quadra" could only take place at a distance that could be traversed by some vessel with which the "Quadra" was dealing, that could travel the distance from the point of seizure to the North Farallones in one hour, and the record affirmatively shows in this case, if the Court will permit me to indicate it to you, that the "C–55" was the only vessel that got in that position, but it has not been affirmatively shown that the "C–55" was a vessel intended for use in conveying liquor to the United States. The record affirmatively shows in this case that the "C–55" was transferring liquor from the "Coal Harbour" to the "Quadra." There is not in the record any evidence that any vessel with which the "Quadra" was dealing could have traversed the distance from the place of seizure to the "Quadra," or the place at which they dealt with the "Quadra" in less than one hour. Furthermore, the record in this case does not affirmatively establish that assuming that the "C–55" was dealing

with the coast of the United States, that it could have, under the circumstances, presented in the record, traversed the distance from the point of seizure of the "Quadra" to the North Farallones in one hour. We respectfully submit that the burden was upon the customs revenue agent, at the time of the seizure of the "Quadra," if they depended upon the speed of the "C-55" to have at that time, and under those circumstances, traversed the distance from the point of seizure of the "Quadra" to the North Farallones; it was quite within their power to do so, and their failure so to do leaves this Court without jurisdiction to consider all of the evidence seized, as I have indicated, and as the record discloses, from the "Quadra" under these circumstances; and I respectfully [261] ask the Court to suppress all such evidence, and direct the jury to disregard it.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., pp. 355-357.)

Mr. FAULKNER.—At this time, if your Honor please, I move the Court on behalf of the officers, master and members of the crew of the "Quadra," and defendant Belanger, jointly and severally, to acquit the defendants, and all of them, that I have mentioned. Said motion is based upon the following grounds:

First. The indictment No. 15,914 does not state facts sufficient to constitute a cause of action; particularly directing the Court's attention that this is a conspiracy to violate the Tariff Law, the lan-

guage of which law reads, that any person who imports merchandise into the United States contrary to law is guilty of an offense, and the law which it is claimed they violated has never been brought to their attention by indictment, or by the district attorney—never brought to the attention of any of these defendants. The venue as to the defendants, officers, master and members of the crew has not been shown.

Second. The Court has not now, and never has had at any stage of this proceeding jurisdiction of the persons of said defendants, or either of them.

Third. The Court has not jurisdiction as to these moving defendants of the subject matter of the offense pleaded or attempted to be pleaded in this indictment, or of the conduct of these moving defendants at all.

Fourth. The *corpus delicti* of the offense has never been established.

Fifth. There is nothing in the record showing a conspiracy and/or an unlawful combination of any kind to violate the laws [262] of the United States.

Sixth. There is nothing in this record showing a conspiracy and/or an unlawful combination of any kind to violate the National Prohibition Act, and particularly the portions thereof set forth in the indictment and/or Sections 593a and/or 593b of the Tariff Act of 1922, and/or the treaty of May, 1924, between the United States and Great Britain.

Seventh. All and each part of the evidence of

overt acts were improperly admissible at the time of receipt.

Eighth. All and each part of the evidence concerning overt acts have not been nor has any part of it been connected up by laying the foundation, viz., the existence of a conspiracy.

Ninth. All and each part of the evidence concerning overt acts have not nor has any part of it been connected up by any foundation at all.

Tenth. All evidence and each part thereof introduced as a result of the seizure of the "Quadra" was illegally admitted and in contravention of the rights of these moving defendants, and each of them, under the Fourth and Fifth Amendments to the Constitution of the United States.

Eleventh. Section 37 of the Criminal Code, under which these defendants and each of them are charged has no application at the place where all acts concerning them were by them committed, at a point admittedly beyond the three-mile limit on the coast line of the United States.

Twelfth. The National Prohibition Act and particularly the parts thereof pleaded in this indictment, and the Tariff Act of 1922, and the sections pleaded in this indictment, have not nor has either of them application beyond the territorial limits of the United States, namely three miles, or a marine league from the coast line thereof. [263]

Thirteenth. The treaty between Great Britain and the United States completely supersedes the application of the National Prohibition Act, and the sections pleaded in the indictment, and the Tariff

Act of 1922, and the sections pleaded in the indictment, and each and every part of each of said acts, and under said treaty the right to arrest and/or criminally or otherwise prosecute officers and members of a ship of British registry is not given.

As to the defendant Belanger, we move, in addition to the foregoing grounds, that there is no evidence of his knowledge of any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of his participation in any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of the defendant Belanger having knowledge of the performance of any illegal act by the "Quadra."

That there is no evidence that the defendant Belanger participated in any illegal act by the "Quadra."

That there is no evidence of defendant Belanger having knowledge and/or participation in any crime or conspiracy whatsoever.

That there is no evidence of defendant Belanger having knowledge and/or participation in the criminal offense set out or attempted to be set out in this indictment.

Now, if the Court will permit me, I wish, with great seriousness, to urge the proposition that this Court is without jurisdiction over the persons and the subject matter of the offense attempted to be alleged in this indictment. In doing so, I realize that the Court will receive it and give it the utmost weight, at the same time I realize that your

Honor is a lawyer, and has given this subject a great deal of thought, a great deal of attention, that you have already committed yourself as to your legal opinion—

(Rep. Tr., 360-363.) [264]

Mr. FAULKNER.—If the Court please, in indicating the grounds of the motion, I do not know whether I indicated that one of the grounds was that the evidence was insufficient to justify and/or support a verdict; if I did not, I ask that that might be considered as one of the grounds on behalf of each and all of the defendants.

(Rep. Tr., p. 373.)

Mr. FAULKNER.—My motion covers the master, officers and members of the crew of the "Quadra," who are the first 22 men in the indictment, my motion is primarily as to them. I also addressed a motion on behalf of the defendant Belanger.

(Rep. Tr., p. 378.)

Whereupon, after argument by the counsel for the Government and for the defendants and the Court, after setting forth his reasons, made the following ruling:

The COURT.—The motion, Gentlemen, will be denied.

Mr. FAULKNER.—Exception.

(Rep. Tr., p. 393.)

Mr. COGHLAN.—If your Honor please, the defendant Vincent Quartararo at this time desires to move to strike from the record and from the consideration of the jury, certain exhibits and cer-

tain testimony relating to and affecting exemplars of handwriting offered and admitted here, together with certain packages of United States one dollar bills that are before you. I believe, as nearly as I can gather from my notes, that this motion refers primarily to Exhibit 37, a photostatic copy of the articles of incorporation introduced here through the testimony of Mr. Milton M. Davis; I move that that be stricken from the record.

Exhibit 41, a photostatic copy of a receipt card of Vincent Quartararo at the Bank of Italy which came in under the testimony [265] of E. J. Casey, if I remember right.

Also exhibit 42, which I believe consists of certain checks, if I remember correctly, bearing a signature of a person named Vincent Quartararo; at any rate, it is exhibit 42, and they all bear upon the same subject.

And exhibits 39 and 40, and exhibits 38, 41, 33, 35, 36 and 31—these are all Government exhibits and they all relate to the matter to which I have called your Honor's attention. I say that so that I may intelligently refer to them.

The COURT.—Those are the different packages of bills, are they?

Mr. COGHLAN.—Yes, the different packages of bills. And also all the testimony of E. O. Heinrick offered here as an expert on handwriting affecting those exhibits. I offer that motion, your Honor, upon the ground that they have not been in any way identified with the transaction or transactions stated or pleaded in the indictment or with

the conspiracy therein described, or with any conspiracy whatsoever or with any violation of the National Prohibition Act, or the Tariff Act of 1922, or with the operations of the "Quadra," evidence of which was taken here, or of the "Malahat" or any of the motor-boats named in the evidence by the witnesses here or with the alleged operations of any of the witnesses who have testified, or that they were ever connected with or ever used at all on any of the criminal or alleged or claimed criminal operations contemplated by these proceedings, or that they were in any way connected with any transaction having to do with the conspiracy charged or the persons charged here in the indictment or with any other persons named as unknown, or with the events or things here testified to by the several witnesses who touched upon those matters, or that they themselves, meaning the bills furnish any evidence of an identity of operation, that is to say, furnish any evidence that [266] they were used in any of the operations claimed to have been criminal and here adverted to by witnesses or counsel, or that they give any evidence of belonging to any transaction having to do with any of the charges here set out in the indictment; and, furthermore, that they do give evidence upon their face, in connection with other things in the record, of having to do with other and distinct and separate transactions from anything which it is claimed transpired in connection with this conspiracy; and that they do not in any way form a bridge

or connection between Vincent Quartararo and the conspiracy here charged or attempted to be proved.

The COURT.—The motion is denied.

Mr. COGHLAN.—We reserve an exception. And now I want to adopt a motion that was made by Mr. Faulkner and to add to it the observations made in my objection; I move for an instructed verdict upon the ground that Vincent Quartararo has in no way been connected with the commission of the conspiracy set out in this indictment, or any offense punishable under this indictment.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

(Rep. Tr., pp. 393–395.) [267]

TESTIMONY OF F. D. DEDRICK, FOR DEFENDANTS.

F. D. DEDRICK, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live in San Francisco. I am at present manager of the California Sea Products Co. That company is engaged in the business of whaling. In connection with my duties as manager of the California Sea Products Co., I was on board the steamer "Traveler," one of our whalers, on Sunday, the 12th day of October, 1924. At daybreak on that day we were leaving Drakes Bay for the whaling grounds. We left at approximately 5:30 that morning. Drakes Bay is just inside of Point Reyes, that is, inside that promontory to the east.

(Testimony of F. D. Dedrick.)

It is the bay that is protected by Point Reyes, itself. I have the captain's pilot-house log here that will give the exact hour when we left. I hold a certificate as master mariner of vessels in this country. I have held that certificate since, I believe, 1892. I followed the sea up until 1908, as master of sailing vessels, mostly. When we left Drakes Bay that morning we proceeded to a point I should judge about five or six miles west of Point Reyes, and perhaps a little further than that; I really don't know the exact point. I am familiar with the United States Coast Guard cutter "Shawnee." She was around there that day when we were whaling, when we were chasing whales outside of Point Reyes. She was in Drakes Bay the night before. She was still in Drakes Bay when we left there in our whaler. She afterwards came out of Drakes Bay and was around where we were for a little while. It must have been about between half past six and seven o'clock in the morning when the "Shawnee" joined us where we were. She stayed around where we were for probably an hour or so. She then, as far as we could see, went off to the westward and out of our sight. I did not see her again on that day. From where [268] we were whaling we could see the North Farallone rocks. It was a nice, clear day, calm.

Mr. GREEN.—Q. Captain, from your position on the deck of the whaler on that morning, could you have seen a vessel at a point 5.7 miles west

(Testimony of F. D. Dedrick.)

magnetic from North Farallone Islands, or 2 points north of that position?

A. I think that the position we were would be about five or six miles due west of Point Reyes, and that would bring us north of the North Farallones, I don't know how many miles, but it would probably be six or seven miles of the North Farallones, wouldn't it?

Q. It would have brought you ten or twelve miles north of the North Farallones.

A. Well, I have never looked at the chart. I would certainly have been able to see a vessel that would have been six miles from our position due west.

WITNESS.—(Continuing.) I was scanning the horizon at that time for whales. We had a man in the crow's nest that morning and I was personally scanning the horizon myself. I did not see the steamer "Quadra" that morning. We got a whale somewhere I think around ten o'clock. This log-book, here, will show you the exact time. We towed that whale back into Drakes Bay and then we came back out there again. We came back out there again about two o'clock, between two and three. Then from ten o'clock to twelve we were in the bay, that is, from the time we started in to the bay and got back to Drakes Bay and until we got back out there again.

Mr. GREEN.—If the Court please, I have here a photographic enlargement of a portion of the chart that already has been introduced in evidence

(Testimony of F. D. Dedrick.)

as part of the Government's case. I understand there is no question on the part of the district attorney but that this is a photographic enlargement of the official chart. I, therefore, offer it in evidence as Defendants' Exhibit "A." [269]

(The chart was here marked Defendants' Exhibit "A.")

WITNESS.—(Continuing.) Referring to this chart, and indicating Point Reyes upon the chart, we were about six miles west of there while we were hunting whales that morning. By referring to the captain's pilot-house log, I can give you the different times. You know, I was not the navigating officer of the ship that day, I was there just as an observer for our own benefit. We got under way from Drakes Bay on Sunday, the 12th day of October, at 5:40 A. M. We had anchored there the night before at 7:40 P. M. 5:50 A. M. Bell Buoy west southwest 3 miles. 6:12 A. M. Point Reyes abeam. 6:30 began chase. That means that we found whales, two finbacks, two miles west of Point Reyes. 10:30 A. M. whale secured; under way. That means that we shot a whale in the meantime and secured it ready to tow it back. Point Reyes at that time was east 5 miles. That is where we got the whales.

Mr. GREEN.—Q. Marking a position on the chart as being 5 miles west of Point Reyes, marking that position with the letter "W," I will ask you, Captain, if, from your position at "W," at ten o'clock in the morning on the 12th day of Oc-

(Testimony of F. D. Dedrick.)

tober, 1924, could you have seen the "Quadra" at the position marked "Q" on the chart, if she had been there?

A. Well, how far is that—12 or 13 miles?

Q. Yes. A. No, she would be hull down.

Q. But could you see her stacks and masts?

A. What size ship is she—I never saw her, that I know of.

Q. Could you at that distance see a steamer 140 feet long, with one stack and two masts, and a sail set?

A. We might have seen the masts and the sails.

Q. Did you see any such vessel at that time?

A. No, sir.

On cross-examination, the witness testified as follows: [270]

We were out there for the purpose of getting whales, and that is what we were interested in. We sighted whales at 6:30 o'clock in the morning, and we picked up a whale at 10:00 o'clock. And it was 10:30 before we got our whale. We kept right after him until we got him and when we got him we made him fast and took him to Drakes Bay.

On redirect examination, the witness testified as follows:

We were not chasing one particular whale from 6:30 to 10:00 o'clock. We were chasing several whales, probably half a dozen. My attention was not directed all that time to any one particular whale.

TESTIMONY OF GEORGE HARRIS, FOR DEFENDANTS.

GEORGE HARRIS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is George Harris. I am one of the defendants in this case. On the 12th day of October, 1924, I was chief officer on the "Quadra." I live in Vancouver. I am a citizen of the British Empire, having been born in England. I hold a master mariner's certificate. That certificate was issued by the British Board of Trade. I obtained it in 1911, and I still have it.

Mr. GREEN.—I do not like to introduce this in evidence, may it please the Court, because it is a part of this witness' personal belongings, and I think he ought to retain it; I would, therefore, like to ask leave to read it into the record.

The COURT.—All right, Mr. Green.

Mr. GREEN.—(Reading.) "First copy. (Board of Trade.) By the Lords of the Committee of Privy Council for Trade. Certificate of Competency as Master of a foreign-going ship. To George William Harris,

"WHEREAS it has been reported to us that you have been found [271] duly qualified to fulfill the duties of Master of a foreign-going Ship in the Merchant Service, we do hereby, in pursuance of the Merchant Shipping Act, 1894, grant you this Certificate of Competency.

"BY ORDER OF THE BOARD OF TRADE, this 29th day of July, 1911.

(One of the
(Assist. Secretaries
WALTER J. HOWELL, (to the
(Board of Trade.

Countersigned,
HENRY M. MALAN,
Registrar General.

Registered at the Office of the Registrar General of Shipping and Seamen.

"In accordance with the provisions of Section 101 of the Merchant Shipping Act, 1894, I certify that this document is a copy of the Certificate to which by the record kept in pursuance of the Merchant Shipping Acts, the within-named George W. Harris, appears to be entitled.

"Dated this 15th day of November, 1916. C. R. Jones, Registrar General.

"General Register and Record Office of Shipping and Seamen. Tower Hill, London, E. E. G.

(Rubber stamp on right-hand corner: "Certified to have passed the Higher Form of Vision Test at W. Hartlepool on the 24th July, 1911. Henry N. Malan," and on the reverse side the following:

"Number 040,545.

"Address of Owner Kingsdown Cottage, Halton Road, Spilsby.

"Date and Place of Birth Eighteen hundred and eighty-six, Ingoldmells, Lincs.

"Signature, George William Harris.

"This Certificate is given upon an Ordinary Examination passed at West Hartlepool on the 24th day of July, 1911.

"Every person who makes, or procures to be made, or assists [272] in making any false Representation for the Purpose of obtaining for himself or for any other Person a Certificate either of Competency or Service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such Certificate or any Official Copy of any such Certificate, or who fraudulently makes use of any such Certificate or any Copy of any such Certificate which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or who fraudulently lends his Certificate to or allows the same to be used by any other person, shall for each offense be deemed guilty of a Misdemeanor, and may be summarily punished by imprisonment with or without hard labour for a period not exceeding Six Months, or by a penalty not exceeding £100, and any Master or Mate who fails to deliver up a Certificate which has been cancelled or suspended is liable to a penalty not exceeding £50.

"N. B. Any person other than the Owner thereof becoming possessed of this Certificate should transmit it forthwith to the Registrar General of Shipping and Seamen, London.

"Issued at the Port of South Shields on the 31st day of July, 1911. N. McLeod Dryden, Dy. Supt."

(Testimony of George Harris.)

(Stamp:) "M. M. Office South Shield 17 Nov., 1916."

WITNESS.—(Continuing.) After I received this certificate I continuously engaged myself as an officer of foreign-going ships under the British flag. I served in the capacity of chief officer. I have been all over the world. This time last year I was master of a foreign-going vessel, the "Canadian-Scottish." That was a vessel of 8,000 to 9,000 tons dead weight, carrying general cargo and a few passengers. We ran to Australia and New Zealand, Japan and China, and back to Vancouver. My certificate [273] has never been revoked, and I am still the entitled owner of it. I remember when the "Quadra" was seized by the United States coast guard cutter "Shawnee."

Mr. GREEN.—Q. Do you know the position of the "Quadra" at that time? A. Yes, sir.

Q. What was her position?

A. 37:49½ north, 123:22½ west.

Q. Where did that place her with respect to the North Farallones?

A. West of south magnetic 13½ miles.

Q. Referring to Defendants' Exhibit "A" in evidence, this chart, were these positions that have been worked upon this chart placed there under your direction? A. Yes, sir.

Q. How did you arrive at the position of the "Quadra" at the time that she was seized, and when?

A. I started to fix the position at half past

(Testimony of George Harris.)

eleven. That was the apparent time at the ship. I did that at that time at the request of Captain Ford. At that time the "Shawnee" was not very far away, just a bit on the starboard quarter.

Q. How did you fix this position?

A. I got a bearing of Point Reyes.

Q. How did you obtain that bearing?

A. I brought her right down to Point Reyes.

Q. Do you know what that bearing was?

A. Yes, sir, northeast half north magnetic.

Q. What did you do next?

A. I took an ex-meridian altitude of the sun.

Q. Did you work out your observations at that time?

A. No, I took other angles, first, before I worked it out; I got all my data first.

Q. What else did you do?

A. I took a vertical angle of Point Reyes.

Q. And what was that?

A. 16 minutes 45 seconds of arc. [274]

Q. What else did you do?

A. I took a horizontal angle of the South Farallone lighthouse and Point Reyes.

Q. Do you remember what the angle was?

A. Yes, sir, 54½ degrees.

Q. Did you take any other observation?

A. No, that was all.

WITNESS.—(Continuing.) After I took these observations I worked up our position. I have the original figures that I made at the time. This sheet of paper, dated at the top "October 12, 1924,"

(Testimony of George Harris.)

is in my handwriting, and the figures are all mine. The figures on this paper are my calculations; the first one is the vertical angle, the one below it is the ex-meridian altitude, and the other is the horizontal angle applied to the bearing. These figures were placed on this sheet by me immediately following the observations that I have already testified to.

Mr. GREEN.—I offer this sheet and the figures thereon in evidence and ask that it be marked Defendants' Exhibit "B."

(The paper was here marked Defendants' Exhibit "B.")

Mr. GREEN.—Q. Will you please point out the position of the "Quadra" as fixed by your vertical angle of Point Reyes that you have testified to—and I am now referring to the chart which has been offered in evidence.

A. Right here, where you have marked it with the letter "P."

Q. What does the line from that position to Point Reyes represent?

A. That is the line of bearing, the compass bearing, northeast half north, magnetic. It is marked, "Northeast half north, magnetic."

Q. What position upon this chart was fixed as the position of the "Quadra" by your horizontal angle of Point Reyes and South Farallone Lighthouse?

A. The horizontal angle in connection with the ex-meridian puts it there, a little bit to the north-

(Testimony of George Harris.)

ward, which position you have marked with the letter "X." [275]

Q. Will you explain how you took the vertical angle of Point Reyes?

A. I got the sextant out and put the telescope in and pointed it toward the Point Reyes hill and brought that down to the horizon where the water comes on the cliff, and then took the reading of the sextant. It was a very clear day and you could see the water line very clearly against the cliff.

Q. How did you take the horizontal angle of Point Reyes and the South Farallone light?

A. You hold your sextant horizontally and clamp it, that is, fix it at zero, and look at the South Farallone Lighthouse, and you bring the reflection of that lighthouse to Point Reyes, and then you take your reading of the sextant.

Q. How did you take the ex-meridian altitude of the sun?

A. I had my clock set at the apparent time at the ship and got my telescope in the collar, ready for taking, and brought the sun down to the horizon and looked at the time. I made it on the even minute, to save interpolating. At 11:44 I took the observation, I took the reading of the sextant. It was all ready for working out.

Q. In your experience as first officer on several ships covering the number of years you have heretofore testified to, were you acting as navigating officer?

A. I used to navigate. In the morning I used to

(Testimony of George Harris.)

take the stars, and at night-time the stars; but no other navigation. When I was second mate and third mate I used to work some problems in the daytime.

Q. How many ex-meridian altitudes of the sun have you taken in your experience, roughly?

A. Thousands of them.

Q. Do you consider it to be accidental if an ex-meridian altitude of the sun taken under the circumstances noted on the 12th day of October, 1924, on board the "Quadra" fixed your position within a mile of the position fixed by other observations, such [276] as bearings?

A. You can get the ex-meridian within a quarter of a mile.

Q. Have you ever done that in your experience?

A. Yes, sir.

WITNESS.—(Continuing.) I was employed by Captain Ford to act as first officer of the "Quadra" on the 9th day of September, 1924. I signed on for a voyage to Mexico and return. I signed on as per the ship's articles at that time.

Mr. GREEN.—Q. Were you ever informed by Captain Ford, or by anyone else, that there was any intention on his part or on the part of the vessel, or anyone controlling the same, to unladen part of the cargo anywhere but at the port of destination? A. No.

Q. What were your duties on board the "Quadra," Mr. Harris?

A. I was a watch keeper; I did a good part of

(Testimony of George Harris.)

the navigation of the ship; and, of course, as becomes a chief officer, I had the working of the crew, and I also did the doctoring.

Q. Under whose orders did you act at all times on board the "Quadra"? A. The Master.

WITNESS.—(Continuing.) At the time I went on board the "Quadra" I did not know any of the defendants in this case, outside of the officers and members of the vessel. I have only met them since this case started; I have met them in the courtroom, and I have seen some of them in Mr. Green's office. The "Quadra" arrived off the coast of San Francisco on September 16th. On the way down here, the condition of the "Quadra's" engines was such that she could not go full speed. I did not have charge of the fuel. She burned about three or four more tons than they ever thought she would. I heard the chief engineer worrying about the fuel all getting burned up; I heard him speaking to the captain about it. She used oil. When we arrived off the coast of San Francisco the oil was getting [277] pretty well used up. There was not sufficient fuel on board at that time to proceed to the destination of the vessel with safety—well, I don't think there was sufficient, because she was using too much up, her tanks were nearly all empty. We obtained further fuel on board the "Quadra" while the "Quadra" was lying off the coast of California, near San Francisco. I believe it was about three days before the capture that we took so much on

(Testimony of George Harris.)

board, and the day before the capture we took the balance. At the time of the capture this fuel was on the ship's deck; we were emptying it into tanks at the time, into the fuel tanks, the after fuel tanks. I saw the Crivellos here on the witness-stand; I cannot say that I recognized them at all. I *never McKenzie* and Pensotti until about two days after we were brought ashore. I do not recognize seeing Allen and Neilsen at sea, either. I never saw Mr. Quartararo before the "Quadra" was seized. I never saw Mr. Belanger before the "Quadra" was seized; I never knew him or I never heard of him. I never heard or knew of Mr. Quartararo before that time. I never saw him until we came into this court, here.

Mr. GREEN.—Q. Do you know whether or not liquor was unloaded over the side of the "Quadra" while she was lying outside of the Farallones?

A. Yes, sir.

Q. Did you have anything much to do with it?

A. Well, I worked the crew, do you see.

Q. Under whose direction?

A. The master's direction. The master would give me an order to fill a boat, and I would get the crew and give the order.

Q. When was the first time that any such orders were given to you on this voyage?

A. Well, I could not say whether it was the first day down, or the second day down, I could not say, because I have not any record of anything. [278]

(Testimony of George Harris.)

Q. By "down," do you mean after you reached this position outside the Farallones?

A. Yes, after the 16th, when we reached the parallel of the latitude of the Farallones?

Q. Now, Mr. Harris, as first officer of the "Quadra," and the officer who had charge of the most of the navigation, did you watch the position of the "Quadra" at all times?

A. All the time during my watch. I was all the time checking up the ship's position.

Q. Under whose direction?

A. The master's direction; that was his orders.

Q. Are you familiar with the drift of the current at that position?

A. I checked up ever since we came down. I checked up the current, the way the wind was, or anything like that.

Q. And you were there from the 16th of September until the 12th of October? A. Yes, sir.

Q. How many times during that time did you check the ship's position in order to determine what the prevailing set of the current was in that position?

A. We used to check up the ship's position about every two hours.

Q. What was the result of your observations regarding the set of the current in that position?

A. When there were westerly winds my observations showed that the general set is east southeast magnetic, after a heavy blow 3 knots per hour, and we had several heavy blows out there. About two

(Testimony of George Harris.)

days after a heavy blow you will have about one knot. With southeast winds, we experienced a set north to northeast magnetic, just until the blow had finished. We had one southeaster out there.

Q. Did that set, following such a wind, last very long? A. You mean southeasters?

Q. Yes.

A. It would last about a day and a half, I think.

Q. Do you know what the set was on the 12th day of October, [279] 1924? A. Yes, sir.

Q. What was it? A. East southeast, magnetic.

Q. About what rate?

A. About 1 to 1¼ knots.

Q. Did you check that on that day?

A. No, I didn't that day. I did up to midnight that night. The second officer took the next watch, and, of course, he checked up and reported no change.

Q. Mr. Harris, after you had worked out the observations that you took at the time you testified to heretofore, did you report the result of your observations to Captain Ford? A. Yes.

Q. Were the officers comprising part of the boarding crew from the "Shawnee" on board the "Quadra" at that time? A. No.

Q. They were not? A. No.

Q. Did they come aboard later?

A. Just a few minutes after.

Q. Did you have your position all worked out at the time that they came on board?

A. The position was plotted up on the chart.

(Testimony of George Harris.)

A. No, I left the forecastle-head when the tow-rope was made fast.

Q. Who made the tow-rope fast?

A. Not the ensign, the other officer, I don't know what they call him.

Q. The officer that you last designated, Mr. Patterson? A. Yes.

Q. Where did you go after the tow started?

A. I went in the captain's room, in his office.

Q. In the captain's office on the "Quadra"?

A. Yes.

Q. Did you leave anyone on the forecastle-head of the "Quadra"? A. Yes, I left one seaman.

Q. What was his name? A. Gisbourne.

Q. Did you leave Gisbourne there with any instructions? A. Yes.

Q. What were the instructions that you left with Mr. Gisbourne?

A. I instructed him to stand at the forepart of the foremast, where he could keep an eye on the "Shawnee" and let me know if anything unusual happened, anything out of the way.

Q. What time was it that the tow started?

A. 12:27, apparent time of the ship.

Q. Did you have a watch on your person showing that time? A. Yes.

Q. Did Gisbourne report to you later? A. Yes.

Q. At what time? A. At 2 o'clock.

Q. What did he report to you at that time?

A. That the "Shawnee" was taking a cast of the lead.

(Testimony of George Harris.)

Q. By "cast of the lead," you mean what?

A. Taking a sounding with the sounding machine.

Q. What did you do upon the receipt of that information from Mr. Gisbourne?

A. I went forward.

Q. What did you do after you arrived forward?

A. Looked to see for myself. [282]

Q. How did you look?

A. I looked with a binocular.

Q. What did you observe on board the "Shawnee"?

A. I saw the men around the sounding-machine and then heaving the lead in.

Q. What time was that? A. 2 P. M.

Q. Do you know this man McLennan, about whom there has been considerable testimony in this case? A. Yes.

Q. What was his position on board of the "Quadra"?

A. He was on the ship's articles as an able seaman.

Q. Did you treat him as such?

A. He was treated as such by me.

Q. Did you know him to be a supercargo?

A. No, he was on the articles and worked as an able seaman, and worked with the crew.

Q. He worked with the crew? A. Yes.

Q. Under whose direction?

A. Under my direction.

(Testimony of George Harris.)

Q. Did he ever perform the duties of a supercargo to your knowledge?

A. Not to my knowledge.

Q. Now, you testified that the tow started at 12:27. A. Yes.

Q. Apparent time at the ship? A. Yes.

Q. Do you know at what time Noonday Rock buoy was abeam? A. 2:27.

Q. How did you ascertain that?

A. The second officer and the captain had taken the bearing of the buoy.

Q. Where were you when the second officer and the captain took the bearing of Noonday Rock buoy abeam? A. I was down in the captain's office.

Q. Where were they?

A. They were on the bridge.

Q. Do you mean what time North Farallones Rock was abeam? A. Yes.

Q. What time was that?

A. 3:11 apparent time at the ship.

Q. Do you know what speed that showed the "Shawnee" was towing the "Quadra" at?

A. Yes.

Q. What speed was shown by that? A. 5:03.

The COURT.—Shown by what? By the fact that the Noonday [283] Rock was abeam at that time?

Mr. GREEN.—That Noonday Rock was abeam at a certain time, and North Farallone Rock was abeam at a certain time.

The COURT.—You are figuring back from what

(Testimony of George Harris.)

you claim was the position, and estimating your speed in that way, are you?

A. No, from the buoy abeam to the rock was so many minutes, and you figure the distance on the chart.

Mr. GREEN.—Q. Did you work that problem out at that time? A. Yes.

Q. Have you the original figures that you made at that time? A. Yes.

Q. Referring to this sheet of paper marked at the top "October 12, 1924," is it all in your handwriting? A. Yes, it is all in my handwriting.

Q. When was this written upon this sheet by you?

A. That day, during the afternoon.

Q. During the tow in?

A. Yes, I put down the time, you see, when we anchored; I put down on a sheet of paper, you see, when these things happened.

Q. What time, Mr. Harris, was Fort Point abeam? A. 9:30 apparent time at the ship.

Q. What time did you drop the anchor in San Francisco Bay?

A. 10:30 apparent time at the ship.

Mr. GREEN.—I offer this sheet of paper and the figures and computations thereon in evidence, and ask that it be admitted and appropriately marked as Defendants' exhibit.

(The sheet was marked Defendants' Exhibit "G.")

Q. Were you on watch the night before October 12, 1924? A. I was on watch till one A. M.

(Testimony of George Harris.)

Q. Who relieved you at that time, if anyone?

A. The second officer. [284]

Q. Mr. Evelyn? A. Yes.

Q. Did you keep a strict watch of the position of the "Quadra" during all of the time she was off the Farallones? A. Yes.

Q. What did you do in that regard?

A. Well, I kept taking cross-bearings when you could see the lights and searchlight, angles, or anything like that, observations, I took a few observations off there, a number of sights.

Q. Did you take bearings and observations to fix the position of the "Quadra" on every day that the "Quadra" was lying west of the Farallones?

A. Sometimes it was foggy and you could not.

Q. On all the days excepting those?

A. Excepting when we were at sea. Some days we were a long way out at sea, in bad weather.

Q. Was the steamer "Quadra" at any time on any day, when she was lying west of the Farallones, or off the coast of California, ever within twelve miles of any United States possession?

A. No, not to my knowledge.

Q. Not while you were on watch?

A. Not while I was on watch.

Q. Who kept the watches, Mr. Harris?

A. The second officer and I.

Q. You and Mr. Evelyn?

A. The captain sometimes would take a few hours for us.

(Testimony of George Harris.)

Q. Could you see the North Farallone Islands at the time that the "Shawnee" was alongside?

A. Yes.

Q. I suppose you have observed the Farallone Islands on many days while you were out there, have you not? A. Yes.

Q. In your opinion, how far away did they look?

A. They looked 14 miles away, every bit.

WITNESS.—(Continuing.) The way I came to be hired as chief officer of the "Quadra" on the 9th of September, 1924, in Vancouver, was that I heard that the "Quadra" wanted a chief [285] officer. I happened to be aboard of one of the Canadian Government steamers, seeking a friend of mine, the captain, and I heard that they wanted a chief officer on the "Quadra," so I went and asked for the job. I had been ashore then about five months. I am a married man; I have my wife and three children. I have followed the sea for 24 years.

On cross-examination, the witness testified as follows:

With reference to the figure 337 constant contained on the sheet of paper upon which I have set out my calculations, I got that figure out of the tables in the Nautical Almanac. That is what they call a natural cotangent. I identify the table from which I took that figure. Point Reyes is 5.97 miles. I used 337 between the two; that was the factor I used, 337. That represents the factor of the tables, the factor for working out one of these

(Testimony of George Harris.)

angles, a short method. It is a natural cotangent; instead of working the long method, it is a shorter method of getting it quick.

When I said that I had been ashore five months at the time I secured the position of chief officer on the "Quadra," I did not mean that I had been out of work all that time, I simply meant that I was ashore and out of a ship; I worked about three months of that time. I have sailed out of Vancouver about two and a half years, that is, I would be in Vancouver about a fortnight and away for six months on a voyage. I am not pretty well acquainted around the waterfront in Vancouver. I know very few people around Vancouver. I know the Canadian Government steamers, the company that I was in—the Canadian Government merchant marine. Besides those steamers, I have seen two or three of the C. P. R. steamers. I did not take much notice of the usual steamers that plied back and forth from Vancouver. While I was working ashore, I saw the "Quadra." At that time [286] she was laid up in Coal Harbor. That was the only time I ever saw the "Quadra," up to the time I shipped on her. She was not on any run at that time, she was laid up at that time. I do not know who owned her; I was never particularly interested in it; I never made any inquiry about it. I have seen the "Malahat" at different times anchored in Vancouver Harbor. I never saw her tied up to the dock. I didn't know what run she was on. I never heard of the "Oden." I never heard of the

(Testimony of George Harris.)

"Erskine." I have heard of the "Coal Harbor." I saw the "Coal Harbor" off at sea; that is the first time I ever saw her. I do not know Captain Hudson; I never met him before. I never met Captain Murray before. I cannot say that I ever heard of the "Jesse"; I read about her in the papers, that is all. I read in the papers that she was a sealer, that she was a sealing schooner at one time; that is all that I read about her. I did not read that she was a rum runner. I did not see anything in the paper to the effect that she was a rum runner to this coast.

Mr. GILLIS.—Q. Of course, you did not have the slightest idea that she might have been a rum runner when you saw her?

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. GREEN.—Exception.

A. No.

WITNESS.—(Continuing.) I never heard of the "Ironbark." I did hear of the "Kiltuish." I saw the "Kiltuish" off the coast, here. That is the first time. I had never seen her before. The only vessels that I knew anything about in the 2½ years that I was at the port of Vancouver were the Canadian Government merchant marine vessels that I was on, myself; that [287] is, the only ones I ever had anything to do with. That is the only ones I knew anything about. I heard of the C. P. R. boats. I do not know how many boats they have.

(Testimony of George Harris.)

I met Captain Ford the day before September 9th. I was introduced to the man, that was all; that was the first time I ever saw the man. Mr. Evelyn introduced me to him. Mr. Evelyn and I were shipmates in the Canadian Government merchant marine together three years, or two and a half years. I had not been talking to Mr. Evelyn a few days prior to that time. Mr. Evelyn did not tell me he was going on the "Quadra"; he said he was working by the ship that day. He did not tell me that he was the second officer of the "Quadra," and that Captain Ford was looking for a first officer, and that he would like me to get the job. I don't know that Evelyn said anything to me about Captain Ford wanting a chief officer. I don't remember anything he did say. I heard that Evelyn was going to ship on the "Quadra"; I heard it on the quay that Evelyn was there; I heard that when I was on the quay, alongside of the Government steamers; that was the morning before my introduction to Captain Ford. I did not know at that time that Evelyn was going on the "Quadra." I did not know that he was going on the "Quadra" until the day that I signed on. That was the day after he introduced me to Captain Ford. At the time of that introduction I did not have any conversation with Captain Ford and Mr. Evelyn. Evelyn just introduced me, and that is all; just passed the time of day. Captain Ford did not tell me at that time that he was looking for a chief officer. I think that that conversation was some-

(Testimony of George Harris.)

where about just before noon. Captain Ford did not tell me how long he had been in port; he did not say what ship he had been on. I met Captain Ford the next afternoon at three o'clock. I had been down aboard the Government steamer again and I walked along the quay. I met [288] Captain Ford at the gangway of the "Quadra." I was not down on the quay to find Captain Ford; I just walked along the quay and I met him again. He did not stop me, I just spoke to him. I said, "Do you want a chief officer?" He said, "Yes." I signed on then. I signed the papers aboard the ship. That was on the 9th. The ship was finished loading then. There were oil barrels on deck. The hatches were on. I never looked to see any of the cargo at that time. I did not ask Captain Ford where the vessel was bound for, I just signed the articles for Mexico and return. I just walked in and he presented the articles to me, and I sat at the table and signed them. I did not have any conversation with him at all. I did not ask him who his second officer was. He told me the ship would sail at seven o'clock in the morning, and I had to get clothes, so I went ashore. The only conversation I had with him when I met him at the gangplank was, I asked him if he wanted a chief officer, and he said yes, and walked up the gangplank into his office, and he presented the articles to me, and I signed them. Then I found out what time the vessel was going to sail, and I left to get my clothes. That was the only conver-

(Testimony of George Harris.)

sation I had with him at that time. I brought my clothes down at nine o'clock at night. I did not stay aboard then, I went back home. I came back to the boat at one o'clock in the morning and turned in. We left the pier at about ten o'clock in the morning, I think. We went out of the harbor and went to sea.

Mr. GILLIS.—Q. Did you stop between the time you left the pier and the time you arrived off the coast of San Francisco?

A. Yes.

Q. When and where?

A. We were stopped in the Straits, but I can't remember what time. [289]

Q. You stopped in the Straits? A. Yes.

Q. How long did you stop there?

A. A few hours, I do not remember exactly the number, because I was turned in, it was during my watch below.

Q. What did you stop in the Straits for?

A. Just stopped there to get the oil barrels and everything lashed, and such like, the boat was not fit to proceed out into the ocean.

Q. That is the only reason you stopped?

A. Yes.

Q. Did you meet any Canadian cutter there?

A. No.

Q. Did you see any Canadian cutter going near you? A. No.

Q. Did you see a Canadian revenue cutter of any kind from the time you left the pier until you arrived off the port of San Francisco?

(Testimony of George Harris.)

A. I can't remember of seeing any.

Q. Did you meet the "Kiltuish" out there?

A. No.

Q. Did you meet the "Coal Harbour"?

A. No.

Q. Did you meet any vessels that you communicated with? A. No.

Q. When was the first time that you learned that there was liquor on board the boat?

A. I could not help but see the liquor when I was walking along the deck to my room, I could smell it.

Q. You could smell it? A. Yes.

Q. You smelled it when you went on the boat, too, didn't you? A. No.

Q. Did not?

A. The hatches were battened down when I went on the boat, but I noticed the smell of it over night.

Q. When did you see Evelyn after you went aboard the ship?

A. I saw Evelyn at nine o'clock.

Q. In the morning? A. At night.

Q. Was that the first time you knew he was shipping on the boat? A. I don't know.

Q. Well, now, think a minute.

A. I knew he must be going on the ship. [290]

Q. Was that the first time that you knew Evelyn was shipping on the boat?

A. That was the first time during the day.

Q. Was that the first time that you knew that Evelyn was shipping on the boat?

(Testimony of George Harris.)

A. I knew Evelyn was shipping on the boat when I signed the articles.

Q. When you signed the articles?

A. Because I had seen his name on the articles.

Q. Did you ask the captain who that particular individual was? A. No.

Q. If he was the same man you knew?

A. No.

Q. Was that the first time you saw Evelyn after he introduced you to Captain Ford?

A. The first time that afternoon, yes.

Q. He introduced you to Captain Ford before you signed on?

A. He introduced me to Captain Ford that morning before.

Q. The morning before you signed on?

A. Yes.

Q. When was the next time that you saw Mr. Evelyn?

A. After I had signed the articles.

Q. How long after?

A. I saw him when I was going ashore.

Q. Where was he? A. Standing on the deck.

Q. He was on the deck? A. Yes.

Q. He was on the boat, then? A. Yes.

Q. You did not see him when you went on?

A. No.

Q. Did you stop and have a talk with him?

A. No.

Q. No talk, at all? A. No.

Q. You had known him for how long?

(Testimony of George Harris.)

A. About the first time I met Evelyn would be two and a half years ago.

Q. Pretty good friends?

A. Not pretty good friends, at all; I knew the man; I was chief officer of the ship and he was third officer.

Q. That made you pretty good friends, didn't it?

A. You are not bound to be good friends; he left the ship shortly after [291] and I stopped on the vessel.

Q. You had no real friendship for him?

A. No particular friendship for him, any more than ordinary.

Q. Didn't you think it was a little out of the ordinary or exceptional that you should be shipping on the same boat with him again?

A. No. I have been shipmates with men over and over again.

Q. Certainly, but that is the only time, except once, that you shipped with this man?

A. Yes, I couldn't help that he happened to be on board another ship I came down to.

Q. You did not think it was exceptional, at all?

A. No.

WITNESS.—(Continuing.) We left Vancouver on the 10th and I do not remember seeing the "Kiltuish" in the Straits. I was standing two watches; every four hours, four on and four off. I don't remember what time I went to bed that night, and I forget what watch I had. I don't remember seeing the "Kiltuish" alongside of us.

(Testimony of George Harris.)

I would know if our vessel was stopped. I would not know, when I was turned in, if another vessel tied up alongside. If I were in my bunk, I would not know that a vessel tied up alongside of us and transferred things. I haven't any idea as to what time I went to bed that night, and I don't remember what watch I was on. I don't remember the vessel "Odena" tying up alongside of us that night. I don't remember that the "Odena" transferred 500 cases of Chinese wines to the "Quadra" that night. I had charge of the crew and would give orders to the crew if I was on deck. When I got up the next morning I did not see any more cargo aboard than when we started out. We were pretty well filled up when we started out, she was filled clear up; we had little or no room for any other cargo. In fact, it was so full that we had barrels on top of the decks. If there had been 500 cases of Chinese wines put aboard I [292] would have known it. There was no Chinese wine put aboard. There was no Chinese wine transferred that night. I am positive of that. The hatches were battened down when we left Vancouver, but they were not sealed. The crew worked on the cargo on the way down from Vancouver; they were shifting it about and sacking. They were taking the bottles out of the wooden cases and putting the bottles in a sack, a case in a sack; I guess a case is twelve. I can't remember what day we started sacking, because it was bad weather part of the time and we could not get the

(Testimony of George Harris.)

hatches off. We did not start sacking practically after we left Vancouver, but it was very shortly after, after we got out to sea. That was not the only work we did. There was other work to do on the ship. We had to get the life-boats and things in order, and the like of that. The ship had been laid up for a while, and the life-boats had to be put in good order. I could see the ship, she laid off there from where I was working at the Pacific Salvage Co. wharf; it was about a quarter of a mile off from that wharf. My curiosity was not aroused as to the boat laid up out there, I could not read her name from that distance; there were two or three old wrecks laying up there. When I saw the "Quadra," she looked to me like the vessel that I had seen laid up there about a quarter of a mile off from the Pacific Salvage Co. wharf.

When we came down here off Point Reyes I saw the "Malahat." I think that was the first day we came down, but I am not sure as to that. I can't remember whether we were sacking that day, or not. I think it was about six o'clock when we saw the "Malahat" and we had not yet started the work of the day. The wooden cases that we emptied were burned. I can't remember what day it was after we arrived here that the first small [293] motor-boat came alongside; it might have been the second day after we arrived off here. I don't remember what boat that was. I never looked at the name of any one of them. I never

(Testimony of George Harris.)

looked at the names of any of them at all. I was not interested in the names, because I did not want to know the names. I don't know why we were sacking all of this cargo as we came down. I did not inquire of anyone why all of this sacking was being done. I did not ask Captain Ford. I just received an order from Captain Ford to sack the liquor. As far as I knew, the vessel was going to Mexico. And as far as I knew until we got down to the Golden Gate I believed that we were still going to Mexico. I did not know why all the sacking was done, I never made any inquiry. All these wooden cases were burned in the furnace of the ship. The ship is an oil burner, but by taking one of these burners out they could burn these wooden cases. I don't know whether it is quite a job to take a burner out, or not; I don't know anything about the boilers, or engines, or anything down in the stoke hold. I know they were burned in the furnace.

When the first boat came alongside I stood on deck and gave the orders to load. I don't remember of picking any of the stuff out at all; the captain gave the orders for the liquor, and tended to it. I did not pick any stuff out. I was standing on deck. I did not give a hand, or anything like that. I was in charge of the work of the crew. I would say, "Go and get the stuff"—the captain would give me instructions what to get, and I would say, "Well, it is down there, go and get it." The captain never gave me a list of anything. He said so much of each kind of liquor.

(Testimony of George Harris.)

The captain personally supervised all the loading of these small boats. I worked directly under the captain's orders. When the captain said to load 100 sacks of Corby, I would simply tell the crew to get 100 sacks of Corby [294] on the small boat, I would pass the word along that had come from the captain, that is, if I was on deck. The sailors worked the winches. I never worked them. To the best of my knowledge I never saw Captain Ford working them. There were several small boats came out.

When we first came down here we took a position about 30 miles off the Farallones. We took a position right out to sea, straight out west. We did not remain constantly in that position, we came in to within about fifteen miles off the Farallones. We saw the "Malahat" the first day we came down. We lost sight of her because we had foggy weather after that time. While we were tied up alongside of her we put some empty barrels on her, and such like. At that time we brought from the "Malahat" over to the "Quadra" barrels of bourbon; it must have been bourbon, I don't know, I did not taste it, but that is what it was supposed to be, bourbon whiskey. While we were tied up alongside the "Malahat" we broke our bowsprit. We did not tie up alongside of her after that, because there was too much swell. I do not know whether the "Malahat" was unloaded at that time, because I did not go aboard her to have a look. I did not hear anything said about it at all, I did not ask, and no one told me. I

(Testimony of George Harris.)

could see that she was loaded light, but then a cargo of booze is not a dead-weight cargo. I did not hear any talk between Captain Murray and Captain Ford while they were tied up there. I know we went alongside of the "Malahat" and put drums aboard, and such as that. Captain Ford was doing the navigating at that time, and put the ship alongside. I was handling the ropes. I had nothing to do with the navigation of the ship at that particular time. There were some cases of wine and some bourbon barrels that were transferred from the "Quadra" to the "Malahat" in a small [295] boat. I could not say that there was one boat in particular that did all that work. I was directing the work on board our ship, and not in the boat that was coming alongside. I saw the stuff being transferred, but I did not take any notice of what boat it was; I did not pay any attention to that, at all, and I cannot remember of ever hearing anyone say what boat it was. McLennan was working with the crew all this time, he was working under my direction. I can't remember hearing the word "Marconi" mentioned in any manner; I might have, but I don't remember it. I might have heard it a number of times, but I don't remember of hearing it. I know there were boats coming and leaving, but I did not look at the names, myself. I do not know how many loads the small boat brought from the "Malahat." She did not bring any fuel, none whatever. All she did was to transfer the empty fuel barrels

(Testimony of George Harris.)

from the "Quadra" to the "Malahat." I cannot remember any names or numbers like the "C–731." I don't remember any boats that came alongside. I know there were several boats, and that I did not look at the names of the boats. I saw the "Coal Harbour" while we were out there. She did not tie up alongside of us. She transferred some cases of liquor to us. She sailed for home I guess it would be about a couple of days before we were captured, as near as I can remember. I could not say it was five days before; it was a couple of days, as near as I can remember that I did not see her off there, but I don't know what date she sailed. I had no conversation with anybody aboard that ship. I had no talk with anyone on that ship, she was too far away. She transferred cargo to us by means of the "Coal Harbour's" life-boats. I think the "Malahat" went home before the "Coal Harbour" did. I have forgotten now how long before, but it would be before; I never kept any notes of anything. [296] I can't remember what day she sailed for home. I saw the "Kiltuish" down here; she was alongside of us. She did not transfer any liquor to us, and we did not transfer anything to her. We were taking oil from the "Kiltuish." I could not say how much we took; she was loaded with oil, and we took a load, whatever it was. She was our supply boat. We got so much of it about a couple of days before we were captured, or perhaps three days before, I would not say, because there was a gale of wind came on

(Testimony of George Harris.)

in the meantime and there was too much sea to lay alongside, and we took the balance aboard the day before capture. It was a northwesterly gale. I cannot say we took oil from the "Kiltuish" on the day the "Coal Harbour" sailed for home, for I don't know what day the "Coal Harbour" sailed for home. I say that we took so many barrels off the "Kiltuish" about two or three days before we were captured, and that is as near as I can remember.

On the way down from Vancouver we had our log over part of the time; I cannot say we did all the time. I do not know what the distance was; I should judge somewhere around 1200 miles, as near as I can give it—1200 miles, I should say. That means nautical miles. I had never been on that run before, I had always been across the ocean. All of my runs prior to that time had been on the ocean, all deep sea work; that is, since I have been *out Canada;* yes, I have been in the Canadian Government merchant marine running to Australia and New Zealand, and then on the oriental run. I could not say how much oil we used coming down from Flattery. I have nothing to do with the oil. I know we had a shortage of oil. The only thing I have to do with the oil is to get it on board. I don't know how much oil that boat should use, only by hearsay. The only way I know that there was a shortage of oil was [297] from the conversation between the captain and the chief engineer. I could not say how much

(Testimony of George Harris.)

we had on board when we arrived off the port of San Francisco. I did not sound any tanks. I do not know how many barrels of oil we had, I did not take any tally of them. As near as I could say, the vessel could not go to Mexico with what oil was left when we arrived off San Francisco. The statement that I made on my direct examination, the direct statement that the vessel could not proceed to her destination because of the shortage of oil, is as I understood it; that is based entirely on hearsay. The chief officer of the ship is not supposed to look after the oil. If the report of the chief engineer to the captain should show that we used about 168 barrels of oil from Flattery down here, I could not say whether that is correct, or not; I never inquired into that. I would not bother with the engineer's work. Of my own knowledge, I do not know whether there was a shortage of oil, or not. I only know by hearsay. From Flattery down, the "Quadra" made a speed of about 170 miles a day, 170 to 175, nautical miles.

Mr. GILLIS.—Q. Now, you say that 337 feet is constant.

A. Yes, constant for the height. It is not feet, it is just 337.

Q. How far were you from the water when you took that vertical angle? A. Twenty feet.

Q. Where were you, on the bridge? A. Yes.

Q. I believe you said your angle was 16–45?

A. 16 minutes, 45 seconds.

Q. You have studied, of course, navigation?

(Testimony of George Harris.)

A. Yes.

Q. Had to in order to get your master's certificate? A. Yes.

Q. Did you ever study Raper? A. No.

Q. Did you ever hear of Raper?

A. Yes, Raper's tables. [298]

Q. Ever see them? A. No.

Q. That is an English publication, is it not?

A. Oh, it is an English publication, but Nories is the particular one you use.

Q. From what you know of Raper's work, it is one of the recognized works on navigation, is it not? A. It is a recognized work.

Q. I would like to call your attention to Table 9 on page 539 of Raper? A. Yes.

Q. That table indicates the number of feet subtended by an angle of one minute at a certain distance of miles: Isn't that correct? A. Yes.

Q. Now you say you were about twenty miles from Point Reyes? A. Yes.

Q. And you were about twenty feet above the water? A. Yes.

Q. If twenty feet above the water, approximately how much closer to the object would that bring you? A. Not much.

Q. About 5.2 miles? A. No, I do not think so.

Q. How much closer do you say it would bring you?

A. I never worked it out that way. I just took the angle and did it as it shows in that table.

Q. Answer the question; how much closer would it bring you?

(Testimony of George Harris.)

A. It would not bring you any closer.

Q. Are you acquainted with Bowditch?

A. No, I have never seen that book.

Q. You have never seen the book? A. No.

Q. And you don't know anything about it?

A. No; it is not an English publication.

Q. No, it is an American publication?

A. I have never seen it before.

Q. Put out by the Naval Department?

A. Yes.

Q. Calling your attention to Table 6 on page 640 of Bowditch; [299] at the height of 20 feet above the water would give you a distance of visibility of 5.1 miles additional, would it not?

A. Yes.

Q. You would not be inclined to dispute that, would you, Mr. Harris? A. No.

Q. You would figure that this table of Bowditch, an authorized publication by the Naval Department was a correct publication and a correct table, would you not? A. Yes.

Q. Calling your attention to Nories, that you have shown me on page 131, table 20, that says: At a height of 20 feet above the water would give you an additional observation of 5.1 miles, would it not? A. Yes.

Q. So that that would bring you closer to an object by five miles, wouldn't it?

A. I do not say it would, with the problem as worked there.

Q. It would increase your visibility that much, would it not?

(Testimony of George Harris.)

A. It would not make much difference in the looks of the land.

Q. As a mathematical fact, wouldn't it increase your visibility that much?

A. I do not think so.

Q. Do not the tables say that?

A. I do not think that would affect that problem.

Q. Let us forget the problem; let us not think about the problem at all, and just confine ourselves to that. It would increase your visibility about 5.1 miles, according to the table of Nories and Bowditch, would it not?

A. It says so there.

Q. Then that would bring your distance down to 15 miles, would it not?

A. Oh, no, it would not, not with working it up like that.

Q. You say it would not?

A. I would say it would not.

Q. What would it do?

A. I do not see it would make any difference at all.

Q. It would not be any different at all?

A. No. [300]

Q. You would say, then, that the visibility at 20 feet above the water and on the water was the same?

A. It would not affect the angle.

Q. Let us not talk about angles; let us talk about visibility of an object. How high is Point Reyes? A. 597 feet.

(Testimony of George Harris.)

Q. At a distance of 20 miles how much of Point Reyes will be below the horizon?

The COURT.—38 feet for an angle of one minute?

Mr. GILLIS.—An angle of one minute would be 35.38 feet Have you got the result?

A. Yes.

Q. What is the result? A. 592.

Q. How much? A. 592. You said 35.38.

Q. 35.38 multiplied by sixteen and three-quarters. A. That gives 592.

Q. Check your figures.

Mr. RIORDAN.—What does your Honor make it?

The COURT.—I am not on the witness-stand.

A. That is all I get it.

Mr. GILLIS.—Q. 592?

A. 592; 35.38 multiplied by 16.75.

Mr. GILLIS.—I ask that that be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 55.)

Q. The result 592 is the height which subtends the angle of 16 minutes and 45 seconds at a distance of 20 miles: Is that not correct? A. Yes.

Q. How far is an object visible at sea?

A. I would say about 10 miles.

Q. Taking the surf-line.

A. I would not say you could see the surf-line 10 miles.

(Testimony of George Harris.)

Q. Take the surf-line, how far is that visible at sea? A. About five miles.

Q. About five miles? A. Yes. [301]

Q. Is that at the sea level, or 20 feet high above the sea level? A. About sea level, I should think.

Q. Then after five miles an object on the shore line will commence to drop below the horizon, will it not? A. Yes.

Q. And the further distant you get from that object the more rapidly it drops: Is that true?

A. Yes.

Q. So that if an object is 597 feet high and you view it at a distance of 20 miles there will be a portion of that that will be below the horizon, will there not? A. Yes.

Q. Will there be more than 5 feet?

A. I could not say.

Q. You could not say if there would be more than 5 feet below the horizon at a distance of 20 miles?

A. I could not tell you how much there would be, there would be so much below.

Q. Would there be more than 5 feet?

A. I could not say.

Q. You don't know. How long have you traveled the seas? A. About 24 years.

Q. Now, as a matter of fact, don't you know that there would be at least 170 feet below the horizon at that time?

A. I never worket the thing out before.

Q. Could you work it out with your tables?

(Testimony of George Harris.)

A. I say I have never worked it out before.

Q. That is not what I asked you. Can you work it out with your tables? Can you?

A. I do not think so.

Q. You do not think so. Try.

A. No, I do not know how to work it out.

Q. You don't know how to work it out?

A. I never worked it out.

Q. All right; if you don't know how to work it out, that is all right; that is all I want to know. But you do know that there would be more than 5 feet below the horizon at a distance of five miles, don't you?

A. I don't know, I never worked the [302] thing out. As I say, there would be so much below.

Q. From your experience of 24 years on the sea, will you now say that you do not know and cannot tell whether or not there will be more than 5 feet below the horizon at a distance of 20 miles?

A. More than 5 feet?

Q. Yes. A. Certainly there will be at 25.

Q. Now, how much, approximately? Your best judgment is all I want.

A. I should say about one-third of it.

Q. About one-third of it? A. Yes.

Q. That would be approximately, then, noting Point Reyes 200 feet, wouldn't it? A. Yes.

Q. Now, you cannot take a vertical angle on an object a part of which is below the horizon, can you? A. Yes.

(Testimony of George Harris.)

Q. You can only take the angle on that part of it that is above the horizon?

A. You can bring the summit of the hill down to the horizon, when the water hits the cliff.

Q. Assuming that a height of 20 feet above the water will give you an additional visibility of five miles, reducing your 20 miles therefore to 15, will you take the paper and work out, according to the Table 9 of Raper, on page 539, the height that would subtend your angle of 16 minutes 45 seconds at 15 miles, the table showing that at 15 miles 26.53 feet subtends an angle of one minute.

A. I have never worked it out that way.

Q. Will you work the problem out? You have got 26.53 feet subtending an angle of 1 minute, of 15 miles. That would be multiplying that by 16¾, wouldn't it? A. Yes. It is 444.

Mr. GILLIS.—I ask that that sheet be introduced in evidence and marked Government's exhibit next in order.

(The sheet was marked U. S. Exhibit 56.)

Q. This table that you have in front of Raper's, from which you took the constant at 337, where was that taken from. [303]

A. From the Nautical Almanac.

Q. That constant in that book would be constant whether you were five miles or twenty-five miles: Is that correct? A. I beg your pardon.

Q. That constant that you used, 337, would be the same whether you were 20, or 25 miles, or 5 miles, that is, the constant for the height of the

(Testimony of George Harris.)

hill? You would use that same constant in working from any of those distances? A. Yes.

Q. Regardless of how far or how close you were?

A. Yes.

Q. Or how much of the object that you were taking the angle of you could see? A. Yes.

Q. What was the first bearing or angle that you took on the morning of October 12?

A. The first bearing?

Q. Yes, the first of any observations that you made. A. The bearing at Point Reyes.

Q. That vertical angle?

A. No, the bearing at Point Reyes.

Q. The night before, you were on the 8 to 12 watch?

A. I was on from about 8 o'clock to 1 o'clock in the morning.

Q. You stretched your watch an hour?

A. Yes.

Q. Where was the ship that morning?

A. At what time, at one o'clock?

Q. Say at one o'clock.

A. She would be around 15 miles off the Farallones.

Q. In which direction?

A. To the westward.

Q. Approximately due west?

A. About west magnetic.

WITNESS.—(Continuing.) On Sunday, October 12 I got up about eight o'clock in the morning and went on duty down in the hold, trimming

(Testimony of George Harris.)

cargo. They might have sacked a little liquor, but I was employed with some of the crew trimming cargo that morning. I was down there all morning, until about 11:25 or 11:30. I could hear the engines just before 11:30, before I came out of [304] the hold. They might have been moving once or twice during the morning. They did move during the morning, but I could not tell the exact time. I guess, as the engines were moved that morning, we shifted our position about a mile. The captain was doing the navigating off the Farallones. So between 8:00 o'clock and 11:25 I took no bearings, no sights of any kind, nothing until I came on the bridge. I came up out of the hold because somebody shouted down the hatch there was a cutter around. When I came up the captain was on the bridge. No one else was on the bridge. No one was at the wheel, so far as I remember. The boat was headed about north at that time, something like that, as far as I can remember. I can't remember how she was headed when I got up in the morning; I never went on the bridge in the morning, so that I could not tell you. When I came up out of the hold I saw the "Shawnee" on our port quarter. I don't know whether she was coming through the water then, or not, I never took that much notice. I don't remember whether I heard the whistle of the "Shawnee." I heard the "Shawnee" fire a shot. I was on the bridge when the shot was fired, I think. I could not say how long it was I was up on the bridge, I can't re-

(Testimony of George Harris.)

member exactly how long I had been there, I did not take any time just then. I was not looking at the "Shawnee" when the shot was fired. I was on the starboard side of the bridge, and I walked through the wheel-house on to the port side. When the "Shawnee" was on our starboard quarter, she was headed north. If I said "port quarter," I intended to say "starboard quarter." She was about four or five ship lengths away. I did not see the "Shawnee" come around our stern and come up to our port quarter and stop; I did not stand and look at the vessel. I had been on the bridge three, or four, or five minutes. I did not recognize [305] the "Shawnee," I had never seen her before. Somebody said it was a cutter, but whether it was a cutter, or not, I did not know. I was not interested to find out. I did go and talk to the captain. He stood by the wheel-house door, port side. I could not exactly remember where I stood on the bridge all that length of time, but I was talking to him. That was quite an important time. Captain Ford said it was a revenue cutter. The "Shawnee" was right astern, I guess, then, more than three ship-lengths away. We were still headed north magnetic, as near as I can remember.

Mr. GILLIS.—Q. Did the captain say anything to you, Captain Ford? A. Yes.

Q. Did he tell you to take some bearing?

A. He told me to fix the ship's position.

Q. To fix the ship's position? A. Yes.

Q. Did he say that he had taken any bearings?

(Testimony of George Harris.)

A. He said he had fixed the ship's position at somewhere in the vicinity of 11:00 o'clock, or 11:10, something like that.

Q. That he had? A. Yes.

Q. Did he tell you how he fixed it?

A. With cross-bearings.

Q. He said he had taken cross-bearings?

A. Yes.

Q. That would be by compass, of course?

A. By compass.

Q. Did he say he had fixed it in any other manner? A. No.

Q. Did he say he had taken any horizontal angles? A. No.

Q. Did he say he had taken any vertical angles?

A. No, he did not tell me.

Q. He just said he had fixed his position at 11 o'clock?

A. About 11 o'clock, or 11:10, something like that.

Q. 11 or 10? A. No, I said 11 or 11:10.

Q. By cross-bearings? A. Yes.

Q. Did you then proceed to take your vertical angle of Point [306] Reyes? A. No.

Q. How long after that did you?

A. I took the vertical angle at the ex-meridian.

Q. Then it was not the vertical angle that you reached first? A. No.

Q. It was the ex-meridian? A. Yes.

Q. Before you took your ex-meridian, had you taken any bearings? A. Yes.

(Testimony of George Harris.)

Q. What? A. Point Reyes.

Q. Had you taken any sights or angles?

A. Not before then.

Q. How long before you took the ex-meridian had you taken a bearing on Point Reyes?

A. About 14 minutes.

Q. How long was it after you came up from the hold of the ship that you got that bearing?

A. I got the bearing three minutes after I had been on the bridge.

Q. Where was the "Shawnee"? A. Astern.

Q. Right astern?

A. I did not say "right astern." I said astern. I did not take much notice, because I was talking to the captain.

Q. Did the captain tell you why you should fix the position of the ship at that time?

A. No; he told me to fix the ship's position.

Q. Did he just leave it to you as to how you should fix it?

A. Yes, he just said, "Fix the ship's position."

Q. Did you believe at that time the "Shawnee" was a Government boat?

A. Well, I did not have much time to take stock of anything.

Q. You are only asked if you believed it was a Government cutter.

A. Somebody said there was a cutter there. I guess I took it for granted it was a cutter.

Q. Which way was the "Quadra" headed at that time? A. About north. [307]

(Testimony of George Harris.)

Q. Had she been in motion prior to that time?

A. She had way; there was way on the ship when I came on the bridge.

Q. She was under way when you came on to the bridge?

A. The vessel had way upon her when I came on to the bridge.

Q. Very much? A. A little.

Q. What rate would you say?

A. I don't know; she had good steerage way.

Q. I believe you said that there was no one at the wheel at that time. A. No, there was no one.

Q. You saw Captain Ford on the bridge, or in the wheel-house?

A. He stood by the wheel-house door.

Q. On the starboard side?

A. Yes. I came up the port ladder and he stood there, and we walked right over to the starboard side.

Q. You came up the port side and then you walked through the wheel-house to the starboard side of the wheel-house? A. Yes.

Q. Where did he go after he told you to fix the position of the ship? A. I did not look.

Q. Haven't you any idea about it? A. No.

Q. Not the slightest in the world? A. No.

Q. The first thing that you did was to take a bearing, to get a bearing on Point Reyes?

A. Yes.

Q. A head-on bearing? A. Yes.

Q. Did you give any signals to the engine-room?

(Testimony of George Harris.)

A. No, the vessel had way on her. I did not give them any signals at all.

Q. Anyone else in the wheel-house? A. No.

Q. Just yourself? A. Yes.

Q. What did you do to get the bearing?

A. I put the helm hard aport.

Q. You took the wheel yourself?

A. Yes, I threw it hard aport.

Q. You threw it hard aport?

A. Yes. [308]

Q. That brought the head of the vessel on to Point Reyes, did it? A. Yes.

Q. Were you behind the wheel, then? A. Yes.

Q. When you were behind the wheel, you noticed the compass? A. Yes.

Q. That is how you got that bearing? A. Yes.

Q. Is the wheel directly in the center of the ship?

A. Yes, the wheel is right in the middle of the ship, right behind the compass.

Q. Behind the compass? A. Yes.

Q. When you are behind the compass, which direction do you mean?

A. The after part of the compass.

Q. And is that directly in the center of the ship?

A. Yes, the binnacle is in the center of the ship, and the wheel is right behind it, as far as I remember it.

Q. Is the compass right directly in the center of the ship? A. Yes.

Q. Was there anything that obstructed your view from taking a head-on bearing?

319

(Testimony of George Harris.)

A. I don't know.

Q. Don't you know? A. No.

Q. Couldn't you see that day, when you took that head-on bearing, whether or not there was something directly in your view? A. No.

Q. Hasn't that ship any masts?

A. Yes, it has a mast.

Q. A mast on the forward deck? A. Yes.

Q. Directly in the center of the ship, is it not?

A. Yes.

Q. Is there a sight vane on the compass?

A. No, there is no sight vane.

Q. Did you just get the bearing from the eye?

A. Yes.

Q. You have to look around the mast in order to tell whether you are head-on, don't you?

A. How could I look around the mast?

Q. You had to look around it, didn't you?

A. No. [309]

Q. If you stood directly in the center of the ship and looked out through the window and got your view directly on Point Reyes, you would be looking right through the mast?

A. If you have got the mast in line with it, that would not make more than a degree's difference.

Q. In order to get the ship head-on, there would have to be a line drawn over the wheel, the compass, the mast, the bow, and Point Reyes, wouldn't there? If it was directly head-on, isn't that so?

A. If you stand right behind the mast and look ahead you can get a head-on bearing.

(Testimony of George Harris.)

Q. Just answer my question: If you have got a direct head-on bearing there would be a line drawn from the center of the wheel, from the compass, through the mast, through the bow, to Point Reyes?

A. Yes.

Q. That is correct, is it not? A. Yes.

Q. Did you just use your eye to determine whether or not you were head-on?

A. That is all. I had no instruments.

Q. You did not take a sight over the compass?

A. Yes, I laid my hand on it.

Q. You laid your hand on it? A. Yes.

Q. On the compass? A. I put it like that.

Q. You just laid your hand across the center of the compass? A. Yes.

Q. What was the purpose of your laying your hand across the center of the compass?

A. To get Point Reyes.

Q. So as to get Point Reyes? A. Yes.

Q. And your idea was that when you laid your hand across the center of the compass and looked along your hand you would see Point Reyes?

A. Yes.

Q. That is correct, is it not? A. Yes.

Q. Now, how long after that did you take your ex-meridian? [310] A. 14 minutes after.

Q. Were you 14 minutes getting your bearing there?

A. No, the ship had good way, and then she came up, she answered her helm very quick.

(Testimony of George Harris.)

Q. She did? A. Yes.

Q. You had thrown it hard aport? A. Yes.

Q. Now, how far did the vessel swing before you checked?

A. I checked her as she was swinging, and then threw the helm hard astarboard, stopping her from going across.

Q. Did she stop? A. Yes, she fell off again.

Q. Did that effectually bring her back to about the position she was before you threw it hard aport?

A. She fell off all the time.

Q. She kept falling off all the time? A. Yes.

Q. That is while you were taking the bearing of Point Reyes?

A. No; after I had taken the bearing; the sail was set, and caught the wind.

Q. Which way was she falling off?

A. To the westward.

The COURT.—You mean you swung her to starboard until—

A. I gave her a swing, and then to check her from going over too far I put the helm hard astarboard.

Q. Did you take your sight along your hand on the compass at the end of the swing?

A. No, just as she got right end on I took the bearing.

Q. While she was still swinging?

A. She did not swing past—

Q. (Interrupting.) If you put the helm hard aport she must have been swinging.

(Testimony of George Harris.)

A. She swung, and I checked her as she was coming to.

Q. You checked her where?

A. I checked her at northeast half north.

Q. That was your bearing?

A. The bearing. [311]

Mr. GILLIS.—Q. Did you check her while you were taking the bearing?

A. No, I checked it as she was coming up.

Q. When did you start checking, with reference to the time you took the bearing?

A. Just before I took the bearing I threw the helm hard astarboard, to keep her from going too far.

Q. Just before you took the bearing?

A. I don't know how long, but I checked the thing up as she was coming up.

Q. Then you threw her hard astarboard?

A. Yes.

Q. And she began to swing westward?

A. Yes.

Q. How far did she swing?

A. I never stopped to look then.

Q. You never stopped to look? A. No.

Q. Did she keep on swinging, or did she change after that? A. She swung to the westward.

Q. Did you keep the helm still?

A. I put the helm hard astarboard and left it, never touched the helm any more, and went on with my other business.

Q. You never touched the wheel any more?

(Testimony of George Harris.)

A. No, I did not. I don't know whether anybody else did, or not.

Q. I am just asking about you. Then you got your ex-meridian? A. Yes.

Q. What is the index error on that sextant?

A. Nothing, no index on it at all.

Q. No index there? A. No.

Q. Would you say that was a rather remarkable sextant, not to have an index error?

A. Well, it is a good sextant, it has been adjusted, and there is no error upon it that I could find.

Q. You have taken a great many sextant angles, haven't you? A. Yes.

Q. Used a sextant a great deal? A. Yes.

Q. A great many different kinds of sextants?

A. No.

Q. And a great many different numbers of sextants? A. No.

Q. How many sextants, approximately, have you used?

A. I have [312] only got the one I have; that is the one I have always had.

Q. That is the one you have always had?

A. And always used.

Q. That is the one you have always used?

A. Yes.

Q. And from your experience as a mariner, would you say it was rather remarkable to find a sextant without an index error?

A. As far as I have seen sextants, I have seen plenty of sextants with no index error.

(Testimony of George Harris.)

Q. You think it was not remarkable, at all, or out of the way to have a sextant without an index error? A. No.

Q. Now, as I understand, when you took your ex-meridian, you got latitude only? A. Yes.

Q. And that put you here on the map at a point Mr. Green has marked "X," this top point?

A. Yes.

Q. Where did you go to take this ex-meridian?

A. Well, I stood on the port side.

Q. The port side? A. Yes.

Q. Which way was the vessel headed at that time?

A. She was coming around to the westward then. I did not look at the compass, how she was heading.

Q. You know approximately how she was headed?

A. I don't know. I never looked at the compass at all.

Q. You did not have to look at the compass, did you? I am asking for the approximate heading, the approximate direction that she was moving. Approximately how she was headed.

A. She might have been heading northwest, about something like that.

Q. About north? A. About north, yes.

Q. Was she still under way?

A. She was falling off all the time.

Q. She was falling off all the time? A. Yes.

The COURT.—Q. Were your engines stopped?

A. Yes, she just had the sail set. [313]

Mr. GILLIS.—Q. Was the sail set when you took the head-on bearing? A. Yes.

(Testimony of George Harris.)

Q. Was the engine going when you took the head-on bearing?

A. No, the engine had just been stopped.

Q. Just prior to that? A. Yes.

Q. Was the engine going when you went on the bridge? A. Just stopped.

Q. It had been going prior to that time?

A. Yes, just a little.

Q. You don't know how long prior?

A. No, I do not know.

Q. What sail did you have on?

A. The main trisail.

Q. Is that all? A. That is all.

Q. You went on the port side to take your ex-meridian? A. Yes.

Q. You stayed on the bridge? A. Yes.

Q. How did the sun bear?

A. It was somewhere off the port quarter.

The COURT.—When was the sail furled?

A. The sail was always kept set to keep her head on to the wind.

Q. On the tow was the sail furled?

A. They never dropped it down until we got in.

Mr. GILLIS.—Q. How was the wind headed?

A. I never took the bearing of the wind, but the wind was westerly.

Q. How long after you took your ex-meridian did you take your horizontal angle?

A. About two minutes or three minutes; two or three minutes after.

Q. Almost immediately?

(Testimony of George Harris.)

A. Yes. As soon as I got the sextant readings I put the reading down on a little piece of paper I had in my pocket, and I went on the other side of the bridge.

Q. To what seconds does your sextant read?

A. To tens.

Q. It reads to ten seconds? A. Yes.

Q. You said that in your vertical angle you got a reading of 16 minutes and 45 seconds, didn't you?

A. Yes, sir. [314]

Q. If your sextant only reads to ten seconds, how did you get it to 45 seconds?

A. I got it between the two tens.

Q. You just figured it was between the two tens?

A. Yes.

Q. Regardless of the fact that it only reads to ten seconds? A. Yes.

Q. Now, Mr. Harris, will you step down here, please. Your horizontal angle taken from Point Reyes and the Southeast Farallones fixes your position somewhere on this circle?

A. Yes, on this dot.

Q. On this dot? A. Yes.

Q. With that bearing alone and only that bearing your position could be anywheres around the circle, could it not?

A. Not when you get up here.

Q. But I say if you only have the horizontal angle and nothing else.

A. The horizontal angle without a bearing, do you mean?

(Testimony of George Harris.)

Q. Yes, without a bearing; just take the horizontal angle, and that is all that you have, with that alone it would put you anywhere around the circle, wouldn't it? A. Yes.

Q. That is true, isn't it?

A. It could put you up here or put you here.

Q. Anywhere on the circle; you would still have the same angle? A. Yes.

Q. Then, in order to fix your point on that circle you get your latitude? A. Yes.

Q. And with your latitude alone, and without your vertical angle, it would put you anywheres along that line of latitude, wouldn't it.

Mr. GREEN.—You mean without the horizontal angle?

Mr. GILLIS.—Yes, I mean without the horizontal angle.

Q. If you get your latitude with the ex-meridian it would put you anywhere along your line of latitude, wouldn't it? [315]

A. Yes, the ex-meridian latitude, that is, that is your latitude.

Q. In order to get your position you would have to anchor yourself some place on that line, wouldn't you?

The COURT.—He doesn't understand your question, Mr. Gillis; he thinks you mean he would have to anchor the vessel.

Mr. GILLIS.—Q. To fix your position on that line you would have to take a bearing, wouldn't you? A. Yes.

(Testimony of George Harris.)

Q. And to fix your position on that line you took a bearing of Point Reyes, didn't you?

A. No, not exactly. I took the ex-meridian latitude as an extra check. I took everything I could.

Q. The ex-meridian was an extra check?

A. Yes, sir.

Q. You took your bearing and fixed yourself on that line by your bearing on Point Reyes; where that bearing would cross your latitude, that would be the position of the ship; is that not true?

A. It should do that.

Q. Isn't that what it did? A. Yes, sir.

Q. Did you fix your position on that latitude line by your vertical angle?

A. On which line, on the bearing?

Q. You have a line of latitude that you know.

A. I fixed the vertical angle along the line of bearing.

Q. I am speaking of your latitude now. You had some place on that line of latitude, didn't you?

A. Yes.

Q. And in addition to the bearing you took a vertical angle of Point Reyes in order to fix your position on that line of latitude?

A. No, I took the vertical angle of Point Reyes to fix it up with the bearing.

Q. To fix it up with the bearing? A. Yes.

Q. The head-on bearing that you took?

A. Yes.

Q. And those two would determine the point on the latitude that you would get? A. Yes. [316]

(Testimony of George Harris.)

Q. You say you checked the current that day?

A. I checked it the day before, up to one o'clock.

Q. Up to one o'clock that night?

A. One o'clock that morning of the 12th, before I went below.

Q. How many times had you checked the current on that watch?

A. I only checked it once that watch.

Q. How did you check it?

A. Took cross-bearings twice to see if she drifted. I measured from one cross-bearing to the other in the two hours.

Q. Was she under sail at that time?

A. She had her trisail up.

Q. She was under steam?

A. Not for the two hours that I was checking up the current.

Q. Was she moving before or after that time?

A. She moves about at various times in a watch.

Q. I appreciate that, but I am speaking of that time.

A. Not during the two hours I am speaking of.

Q. At any time on that watch was the engine going? A. Oh, yes.

Q. Which way were you headed during that watch? A. Always right to the westward.

Q. You always headed to the westward and you were headed to the westward that night?

A. Not all the time.

Q. How did you check up to find out how far you had drifted? A. I took the cross-bearings.

(Testimony of George Harris.)

Q. Of what?

A. Of the Farallones and the Point Reyes light.

Q. How far off were you then?

A. About 15 miles, 15 or 16 miles.

Q. How did you take that bearing?

A. Turned the ship around.

Q. You took two head-on bearings?

A. No, I don't know that I took them head-on that time.

Q. How did you take them?

A. I could look along the compass without putting the ship on head-on bearing for that. [317]

Q. Did you look along the compass then to take those bearings the night before? A. Yes.

Q. Just how did you do that?

A. Look along the compass at the lights.

Q. Stood back of the compass and sighted over the compass to the light? A. Yes.

Q. Did you use any instrument at all? A. No.

Q. Did you put your hand on the compass?

A. Yes.

Q. Did you use your hand? A. Yes.

Q. Approximately how did Point Reyes bear at at that time?

A. I cannot remember the bearing, that is too long ago.

Q. I say approximately. A. I could not say.

Q. Which way was it?

A. North and east, or somewhere around that way.

Q. Which way did the South Farallone lighthouse lie from you at that time?

(Testimony of George Harris.)

A. It would be somewhere around south of east; I could not state the exact bearing or anything like that for I don't remember.

Q. You would have to look right over the stern of the ship to see it, wouldn't you? A. No, sir.

Q. Wouldn't you if you were headed westward?

A. I didn't say that I was headed to the westward all the time.

Q. Oh, you turned around then, did you?

A. I guess I did.

Q. No guessing about it. Don't you know? Can't you remember what you did?

A. No. I didn't take much stock in that. I checked her up.

Q. And it is upon those bearings that you determined the drift of the ship that night?

A. I had been doing it all the time we were off there.

Mr. GILLIS.—I will ask the reporter to read the question and have the witness answer it. [318]

(Question read by the reporter.)

A. No, I don't say that night, but I took the bearings all the time.

Q. Do you know whether or not there is a steady current?

A. That is what we experienced, a steady current, while the wind was westerly.

Q. Did you get any data on that at all?

A. While we were off there I was checking up the drift and found out that sometimes it would

(Testimony of George Harris.)

be two knots and sometimes less, sometimes one, sometimes about half a knot.

Q. Don't you know there is a regular steady current out there beyond the Farallones, about where you were?

A. So it says in the Pacific Pilot.

Q. And does not that say that the current is south southeast?

A. Yes, south southeast but it is affected by the winds.

Q. Was there any wind on the 12th day of the month?

A. No, but it was blowing hard a couple of days before.

Q. Wasn't it quiet on that day?

A. The day before, yes.

Q. Wasn't it quiet on the 12th of October?

A. Yes.

Q. It was a still day?

A. A still day, a fine day.

Q. It was a perfect day? A. Yes.

Q. What was the last angle or bearing that you took that morning?

A. I didn't take any that morning.

Q. I mean on October 12.

A. I didn't take any that morning. I left the bridge at one o'clock.

Q. You just testified about some bearings and some angles. What was the last one of those you took?

A. Which do you mean, just before the capture?

(Testimony of George Harris.)

Q. Yes.

A. The horizontal angle was the last one.

Q. Where were you when you took that?

A. On the starboard side.

Q. You had then moved from the port to the starboard? [319]

A. I stood on the starboard side when I took it.

Q. You had moved then from the port to the starboard side? You have testified that you took the ex-meridian on the port side?

A. Yes, I walked across to the other side.

Q. You walked across to the starboard side?

A. Yes, sir.

Q. How was the vessel headed then?

A. I couldn't tell, I never looked at the compass.

Q. Can you approximately tell how she was headed? A. No, I cannot.

Q. You don't know whether she was headed north, east, south or west?

A. I knew she was up somewhere toward northwest, or something like that.

Q. Something toward northwest?

A. Somewhere around there.

Q. Which way would the southeast Farallone bear from you then?

A. It would be a little on the starboard quarter.

Q. A little on the starboard quarter?

A. Somewhere around there.

Q. Nearly astern?

A. I don't say nearly astern. I forget exactly how it was.

(Testimony of George Harris.)

Q. When you took the angle with your sextant, can you approximate how near it was astern?

A. I forget now.

Q. Was there anything there that intercepted your view on that sextant angle? A. No.

Q. Did the after rigging of the ship affect it in any way? A. No, that would not affect it.

Q. You had a clear vision both of Point Reyes and the Southeast Farallones? A. Yes, sir.

Q. You were constantly checking that on the current for your position every day, weren't you?

A. Yes, sir.

Q. And you did that from the first day that you arrived there?

A. Yes, while we were in sight of land we used to [320] check up.

WITNESS.—(Continuing.) The first time that I found out we were not going to Mexico, as I thought we were when we started, was after we had been down here opposite the Golden Gate for two or three days. We had seen the "Malahat" at that time, but had not taken cargo from her; we took cargo from her later on. By that time I guess we had put cargo on boats, but I never took no tally of anything like that. The first time I realized that we were engaged in rum running was, I should think, when they started putting cargo into the small boats. It looked like it then. That was the first intimation that I had of it.

Mr. GILLIS.—Q. You believed that all the sacking that you had done on the way down, and the

(Testimony of George Harris.)

first two or three days that you were out of the Golden Gate here, that you were sacking your liquor for a Mexican port? A. I didn't know.

Q. Didn't you believe that?

A. I had never been on a rum runner before.

Q. I didn't ask you that. I say didn't you believe that?

A. I didn't bother to think about it.

Q. How is that?

A. I say I didn't bother to think about it. I was in the ship and I just stopped there until I could get back. I couldn't do anything about it.

Q. Didn't you have any thoughts about it at all?

A. No, except that I wanted to get the ship empty and get back out of it.

WITNESS.—(Continuing.) When I saw the small boat that the "Shawnee" was firing at at the time of the capture I didn't know that it was the "C–55." I don't remember any boat. That is the first that I saw of her. At the time the tow started I was on deck. I did not take any stock of which way the vessel was headed, but I know that she was headed to the [321] westward. I did not take the bearing of Noonday Rock. I took somebody else's figures for that. The captain and the second officer were checking her in. I did not take any bearing of the North Farallones; the captain and the second officer took that bearing and gave me the figures for that. Referring to Defendants' Exhibit "C," the second officer gave me those figures. I copied them down as he gave them

(Testimony of George Harris.)

to me from his paper. The distance there between the buoy and the rocks is 3.7. I did not allow anything for drift.

On redirect examination the witness testified as follows:

Mr. GREEN.—Q. Mr. Harris, in figuring your speed between the Noonday Rock buoy and the North Farallone Rock, why didn't you allow anything for drift?

A. I don't know. I just took the distance.

Q. What speed were you trying to determine?

A. The speed the vessel was going over the ground.

Q. Which observation was it that you took that fixed your longitude?

A. The horizontal angle and the bearing would give the longitude.

Q. Would not the horizontal angle fix the longitude?

A. Yes, that is what I say, the horizontal angle and the bearing would fix the longitude.

Q. Did the foremast of the "Quadra" interfere with your taking a head-on bearing?

A. It shouldn't; you should get it within a degree.

Q. What was the condition of the ship at that time as to riding level?

A. I don't remember that.

Q. Did she have any list at all?

A. She might have had, I don't remember that.

Q. In taking the vertical angle of Point Reyes hill, did you correct for height of eye?

(Testimony of George Harris.)

A. No, I just worked it off as I [322] got the angle. That is what I always did.

Q. If you corrected for height of eye, would it have placed you nearer or further away from Point Reyes?

A. It would show me further away, I should think.

On recross-examination the witness testified as follows:

Mr. GILLIS.—Q. I notice on this paper, Defendants' Exhibit "B," magnetic north 39 degrees 22 minutes east: Is that right? A. Yes.

Q. That was the reading of the compass?

A. That was the magnetic bearing.

Q. At that time? A. Yes.

Q. Did you apply any deviation?

A. There is no deviation on a ship.

Q. There is no deviation to the compass?

A. No.

Q. Do you know that, as a matter of fact?

A. When the ship was swung we got the card from the one previously and there was no deviation.

Q. Have you got that card?

A. I have not got it on me.

Q. There was no deviation at all? A. No.

Q. Is it not a fact, Mr. Harris, that when the ship is headed northeast one-half north, as it was pointed at that time, that if there was a deviation of the compass it would be greatest at that time?

A. No, I don't see why it should.

(Testimony of George Harris.)

Q. Do you know whether it would, or not?

A. Well, I don't know whether it would, or not.

Q. Do you know when your quadrangle deviation is greatest?

A. Yes, when it is on the quadrangle point.

Q. What are those points?

A. Northeast, northwest, southeast, southwest.

Q. Do you know what causes a quadrangle deviation? A. Yes.

Q. What?

A. Induction in horizontal soft iron. [323]

Q. I show you a picture and ask you if you recognize that as the wheel-house of the "Quadra"?

A. Yes, that is the wheel-house of the "Quadra"; it looks like it anyway.

Mr. GILLIS.—I ask that be introduced in evidence and marked Government's exhibit next in order.

(The photograph was marked U. S. Exhibit No. 57.)

The COURT.—Let me see it. Was that taken from the starboard?

Mr. GILLIS.—Yes, sir.

Q. Showing you Government's Exhibit No. 57, and pointing out on this picture, Mr. Harris, this cable that runs around the wheel-house, would you say that that would have any effect upon the deviation of the compass?

A. Them derricks were up that day.

Q. Would you say that they were up that day?

(Testimony of George Harris.)

A. Yes.

Q. Would you say that they were up that morning? A. They were up that morning.

Q. You are positive of that?

A. Yes, all the derricks were up, not only them but the other derricks were up.

Q. You were in the hold all morning, were you not?

A. From breakfast time up until the time I came on the bridge.

On further redirect examination the witness testified as follows:

Mr. GREEN.—Q. What point did you say there was no deviation on?

A. I said we had no deviation at all. As far as I remember, the compass was pretty well magnetic.

Q. Is one degree deviation much of a deviation?

A. No, that is nothing; that would not be material here or there.

Q. I hand you a deviation card and ask you if you ever saw it before?

A. Yes, that is the "Quadra's."

The COURT.—You treated your magnetic as the true magnetic, did you?

A. Yes, I did, because one degree is nothing in a ship like that. [324]

Mr. GREEN.—I offer the deviation card of the "Quadra" and ask it be marked Defendants' Exhibit "D."

(The card was marked Defendants' Exhibit "D.")

(Testimony of George Harris.)

Q. Now, Mr. Harris, when you shipped on the "Quadra" did you know what the cargo was?

A. Well, I knew that it was liquor.

Q. You knew that it was liquor? A. Yes, sir.

Q. At the time that you shipped on the "Quadra" and knew that the cargo consisted of liquor, did you know there was any intention on the part of anyone to tranship any of that liquor prior to her destination as shown upon the shipping articles? A. No.

Q. Mr. Harris, when you were off the coast of the United States, and particularly off the coast of San Francisco, and took part, under the captain's orders, in assisting in the unloading of liquor into small vessels, did you know you were violating in any way any law of the United States?

Mr. GILLIS.—I object to the question on the ground that it is leading and suggestive, and putting the answer right into the witness' mouth. It is not proper redirect examination.

The COURT.—It is entirely immaterial whether he knew it, or not. The objection is sustained.

Mr. GREEN.—We take an exception. That is all.

TESTIMONY OF J. EVELYN, FOR DEFENDANTS.

J. EVELYN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is J. Evelyn. I am one of the defend-

(Testimony of J. Evelyn.)

ants in this case. I live in Vancouver. I came out in 1920. I was born in Liverpool, England. I have been a British subject all my life. I have been following the sea since 1916. I hold a second mate's certificate of competency from the British Board of Trade. I don't remember just when I got that. That certificate is in [325] a safe deposit box in the Bank of Montreal at the present time. I have been unable to obtain it from there to present here. I have been in San Francisco since the time of my arrest. I previously had a coasting mate's certificate, Canadian. After receiving that coasting mate's certificate, I sailed on the east coast. I was second mate on a vessel, then I was third mate. I was second mate afterwards on that certificate and then third mate again. Since I received my last certificate I have been sailing as third officer on some of the Canadian Government merchant marine vessels.

On the 12th day of October of last year I was second officer on the "Quadra." I was hired by Captain McKay, who was captain of the "Quadra" prior to Captain Ford joining the "Quadra," I think I joined the "Quadra" about the 25th of August, of last year. At that time she was getting ready to load cargo. I helped to get her ready generally for sea. I superintended the loading of the cargo. I knew what the cargo was. I signed on for a voyage to Mexico and return, as per the shipping articles, and my signature is on the shipping articles. We sailed from Vancou-

(Testimony of J. Evelyn.)

ver about the 10th of September, 1924. No one told me that a part of the cargo of the "Quadra" was to be unladen before reaching the point of destination. I had never before sailed on a vessel that was laden with liquor. I had previously sailed down the west coast of North America, down as far as San Pedro. That was when I was second mate on the "Canadian Rover," vessel of the Canadian Government merchant marine. That was about two years ago now. I have been in San Francisco before, coming from Australia. I was here on the "Canadian-Scottish," "Canadian Winner," and also the "Canadian Traveler."

I used to assist the chief officer in the navigation of the [326] "Quadra" and keep a watch along with him. The "Quadra" arrived off the Faralone Islands on the morning of the 16th of September. I do not just remember the date when the first boat appeared alongside of the "Quadra" and was loaded with liquor. It might have been two or three days after we arrived. From that time until the 12th of October several vessels appeared alongside the "Quadra" and received cargoes of liquor. I used to handle the cargo on board the "Quadra," but I never went aboard the other boats themselves. I never personally placed any of it on board. Men under my command had something to do with it. I was acting under the master's and the chief officer's orders. At the time of the seizure of the "Quadra," October 12, 1924, I did not know any of the other defendants in this case besides

(Testimony of J. Evelyn.)

the officers and crew of the "Quadra." I did not know and never heard of the defendant Balenger or the defendant Quartararo, or the defendants Pensotti and McKenzie, or the defendants Allen and Neilsen. I remember the Crivellos testifying here. To my knowledge, I never saw them before they appeared here as witnesses in this court. I do not remember seeing them at or near the "Quadra."

I came on watch at one o'clock in the morning of the 12th of October, relieving the chief officer, Mr. Harris. The first observation I took to fix the position of the steamer "Quadra" that morning was after daybreak, about half past six or thereabouts. I headed the vessel to what I wanted to take a bearing on, Point Reyes, and the lighthouse on the South Farallone. I do not remember how those objects bore at the time.

Mr. GREEN.—Q. Do you remember approximately the position of the steamer "Quadra" at that time with reference to the North Farallone Rocks?

A. She would be about 16 miles off.

Q. Which way. A. About west magnetic.

[327] Q. About west magnetic? A. Yes.

Q. Did you take another observation of the same kind later in the morning?

A. Yes, I took others at eight o'clock.

Q. Of what object? A. The same objects.

Q. Did you take them in the same way?

A. In the same way.

(Testimony of J. Evelyn.)

Q. Do you remember approximately in what position that observation fixed the steamer "Quadra" with relation to the North Farallone Rocks?

A. She drifted about a mile, or maybe less, to the east southeast.

Q. When did you go off watch?

A. I went off at eight o'clock.

Q. And you were relieved at that time by whom? A. Captain Ford.

WITNESS.—(Continuing.) When I went off watch I had my breakfast and then I turned in. I did not return to the bridge until nearly twelve o'clock, it must have been five minutes of twelve, When I returned to the deck of the "Quadra" I saw the revenue cutter "Shawnee." I was on the bridge when the tow commenced.

Mr. GREEN.—Q. Did you take any observation at the time of passing known objects on the tow in? A. Yes, sir.

Q. What did you take your first observation of?

A. I took abeam bearing of Noonday Rock buoy.

Q. Do you remember what time the tow commenced? A. Yes, sir.

Q. What time was it?

A. 12:27 when the ship started to move, move through the water.

Q. What time was Noonday Rock buoy abeam?

A. 2:27.

Q. What time was North Farallone Rock abeam? A. 3:11.

(Testimony of J. Evelyn.)

Q. Do you know the distance between Noonday Rock buoy and North Farallone Rock?

A. Yes.

Q. What is it?

A. 3.7 miles. That is the one that I would call the most southern of the North Farallone group.

Q. Basing your calculation upon the point just mentioned, did [328] you calculate the speed of the tow? A. Yes, sir.

Q. What was it? A. 5.04 miles—knots.

Q. Knots? A. Yes.

Q. Did you calculate that at the time?

A. Yes.

Q. Have you with you your calculations made at that time?

A. I have the paper but I haven't got it with me.

Q. Where is it? A. I have it at the hotel.

Q. Is that the paper you showed to me yesterday? A. Yes, sir.

Q. Will you produce it in the morning?

A. Yes, sir.

Q. Did you call for any movements of the engine between one o'clock and eight o'clock in the morning of that day?

A. Yes, it was moving several times.

Q. Which way were you moving?

A. Always to the westward.

Q. Always to the westward?

A. That is, with the exception of the times when I headed her onto a light to take a bearing.

(Testimony of J. Evelyn.)

Q. Why did you call for engine movements during the early morning and head the ship to the westward? A. I thought she was setting in.

Q. To overcome the drift that you felt was pulling her in? A. Yes, sir.

Q. Did anyone assist you in taking these bearings of Noonday Rock buoy and North Farallone Rocks? A. Yes, sir.

Q. Who? A. Captain Ford.

Q. Was he present with you when you took the bearings? A. Yes, sir.

Q. Did he take some at the same time?

A. He checked them with me.

Q. Did you communicate the information that you received from these bearings to Mr. Harris.

A. Yes, I gave him the times accurately.

Q. Did you check over Mr. Harris' bearings taken after the [329] seizure? A. Yes, sir.

Q. Did you find them to be correct at that time? A. Yes, I found them to be correct.

The COURT.—Q. Do you mean you checked the figures or took bearings?

A. I just checked the figures.

Mr. GREEN.—Q. How far, at the time of the seizure of the "Quadra" by the "Shawnee" was the "Quadra" from the North Farallone Rocks?

Mr. GILLIS.—If he knows, he has not shown by any evidence thus far that he took any bearings or anything else that would give him that knowledge. He has not shown that he is qualified to answer that question.

(Testimony of J. Evelyn.)

The COURT.—How would he answer that?

Mr. GREEN.—Only by checking the bearings.

The COURT.—He did not check the bearings; he only checked the figures. All that he could testify is that he saw a calculation made by somebody else. I will sustain the objection.

Mr. GREEN.—Q. I understood you to say that the first time that you found out that part of the cargo of the "Quadra" was going to be transhipped before reaching the point of destination was a couple of days after you reached your position off the Farallones?

A. It might have been a couple of days, it might have been three days. I am not quite sure as to the time.

Q. But at the time that you participated, either directly or indirectly in the unloading of part of the cargo of the "Quadra" into small boats in that position, did you know that you were in any way violating any law of the United States?

Mr. GILLIS.—The same objection to that as was made to a similar question asked the witness Harris.

The COURT.—The objection is sustained.

Mr. GREEN.—Exception. [330]

Q. Did you ever do anything, Mr. Evelyn, in connection with the unloading of the cargo in the "Quadra" excepting under the orders of the Captain? A. No, sir.

On cross-examination the witness testified as follows:

(Testimony of J. Evelyn.)

I was on the "Canadian Traveler" about a month before I was employed to go on the "Quadra." When I was employed to go on the "Quadra" I saw Mr. Mason, the chief engineer, and Mr. Winterburn, the third engineer. I did not see anybody else except members of the crew of the "Quadra." The only person I had any contact with at all, the only persons with whom I came in contact at all, were the officers and members of the crew of the "Quadra." On the 25th of August the "Quadra" was in drydock, and had been in drydock, I think, two days. After they were through with her on the drydock she was taken along Valentine Pier. I went with her from the drydock to the pier. I do not remember ever having seen her before she went into dry dock. We commenced loading the vessel as soon as she got alongside the pier. Captain McKay was there a great deal of the time. I did most of the superintending of the loading. I did not have any talk with Captain McKay about the cargo being all liquor, but I knew it was all liquor. That is not unusual, because there are lots of vessels that take cargoes of liquor. They come out of all ports in the world with liquor. I don't know that there are a lot of vessels that come out of Vancouver with cargoes of liquor. I am not familiar with coastal shipping out of Vancouver. Prior to that I had confined my attention to ships going across the ocean, that is, mostly. I had read in the papers of coast liquor ships going out of Vancouver, but

(Testimony of J. Evelyn.)

that is all I knew of it. I may have read of some of the names of the boats but I do not remember them, they made no impression on [331] me. I had heard of the "Malahat" before. I did not know exactly what she was engaged in doing; I did not know that she was a rum runner, I didn't know she was carrying liquor at that time. I did not know anybody aboard the "Malahat." I just have seen her in Vancouver; I saw her at anchor, alongside the pier. I never watched her loading up. I never heard of the "Odena." I never heard of the "Erskine." I have seen the "Coal Harbour" in Vancouver, alongside the dock. I did not know Captain Hudson or any of the officers or members of the crew of the "Coal Harbour" at any time, and never talked with anybody who had been on the "Coal Harbour," and did not know what she was engaged in or what her run was. I never heard of the "Jesse." I don't know that she pulled into port just before we left. I never heard of the "Ironbark," or I never heard of the "Kiltuish" at that time.

I think we finished loading the "Quadra" two days prior to sailing; I am not quite sure of the date. I think we finished loading her on the 8th and we sailed on the 10th. We remained at the pier during that time. When we got out into the Straits we did not meet any vessel. I did not see the "Kiltuish" out there. To my knowledge the "Kiltuish" did not come alongside of our vessel. I remember that on the morning of the 11th of

(Testimony of J. Evelyn.)

September I had the 12 to 4 watch. I went to bed at eight o'clock the night before, that would be the night of the 10th. The only time we left the pier in Vancouver before we went to sea was when we swung out into the harbor to correct the compass. That was the day before we sailed. After we did that, we brought her back to the pier again. Captain Ford was on the boat at that time. That only took us two or three hours. I think Captain Ford joined the "Quadra" before the 7th; I am not sure as to the date. Captain McKay did not tell me why he was not [332] going to continue on the "Quadra." I had not known Captain Ford before he joined the "Quadra." On the 11th, the morning of the 11th, I had the 12 to 4 watch. I did not see the "Kiltuish" tie up alongside of us. I did not see any Canadian cutter from the time we left until we started down the coast. I think the first time I saw the "Malahat" was the day we arrived off the Farallones, about the day after; I am sure it was not the same day. When we arrived here we took a position about 25 or 30 miles off the Farallones, about west magnetic. We stated there all day. I did not see any boats come up that day and communicate with us. I believe the "Malahat" discharged part of her cargo to us, yes, she did. We went alongside of her and tied up to her. I don't remember how many days that was after we arrived here. I saw several of the small boats that came out to get liquor. I do not remember their names. I do not remember the names of any of

(Testimony of J. Evelyn.)

them. I never looked at them very closely. I was there, though, and I helped supervise the loading from the "Quadra" onto them. There was one small boat that did a lot of transferring from the "Malahat" to the "Quadra." I don't remember if it was the same boat that transferred a lot of empty barrels—fuel barrels, etc.—from the "Quadra" to the "Malahat," but there was a lot of barrels. I don't remember that it tied up behind us one night. I do not know the name of that boat. We saw the "Coal Harbour" after we arrived. There was transfer of cargo from the "Coal Harbour" to the "Quadra." It was a transfer of cases; it might have been whiskey, or it might have been gin, I don't remember now. It might have been either. It might have been wine, for all I know. It was liquor, that is all I know. When we left the Straits up at Vancouver and started south, I did not do any of the supervising of the [333] cargo. I saw it done, though. Mr. Harris had the supervision of the crew. He used to give his orders to the boatswain and the boatswain would carry them out. Sometimes I helped, but he was working the crew, I was not doing that. I was supervising the working of the crew when it came to loading these small boats, and I took my orders from the first officer; he showed me the quantity and the kind of liquor to take out of the "Quadra" and put on the small boats. The crew were not working at sacking every day, that is, all day. They had other duties to perform. I would not say that

(Testimony of J. Evelyn.)

they were sacking a lot of the time. It might have been an hour one day and two hours the next, or something of that kind. I do not know that there were 15,000 sacks put aboard; I don't know the number of bales put aboard. I don't know that there were 25 or 30 bales put aboard. My memory is very hazy on that point. I knew we had bales of sacks, though, when we left Vancouver. I knew they were in the hold, I saw them. I could not say from my observation of them how many there were. We were sacking sometimes while we were out here opposite the Farallones. I didn't know anything about the object of the sacking. I understood the ship was going to Mexico and I had no reason to think otherwise. I believed that they were sacking it for Mexico. When they stopped outside the Golden Gate and were sacking liquor and the small boats were coming out I didn't know whether they were sacking that liquor for Mexico. I didn't know then that I was aboard a rum-runner. When I say I didn't know, I mean that of course I had my doubts then. That is all I had, just a doubt. I never said anything to the Captain about it, or I never said anything to the first officer about it, or I never said anything to any of the members of the crew about it. It is customary on a vessel for everybody to take orders from the master. [334] It is customary in coasting vessels for a crew of a vessel to work the cargo on a voyage. It is not customary for them to change the cargo from one character of package to another, not even on

(Testimony of J. Evelyn.)

coasting vessels. I should say that that was an unusual procedure. Still, I did not talk to anybody about it, I just kept my own counsel. The subject was never brought up.

About ten minutes to twelve on Sunday, October 12th, the steward called me and told me that we had been seized by a revenue cutter. I came out on deck and went to the bridge. At that time there were two officers from the "Shawnee" there. I do not know whether they were on the port side or the starboard side. There was nobody at the wheel. I think they were just getting the tow-line aboard at that time. The "Shawnee" was a little bit on our starboard bow. I don't remember which way the "Quadra" was headed, I didn't look at the compass at that time. I would say, though, that she was headed westerly. There was no motion on the ship at that time. I do not know if we had been in motion prior to that time. I was asleep up to the time the steward awakened me. During my watch that morning we had sail up on the "Quadra"; we had up the main sail and the trisail. That sail was up constantly. During my watch that morning from one o'clock to eight I signaled the engine-room several times. I told them that when I rang for slow I wanted the engines just to turn over, to go as slow as possible. That was the signal that I gave each time. I do not remember how many times I did that during the night.

Mr. GILLIS.—Q. Was your vessel that night

(Testimony of J. Evelyn.)

always headed westward, or in the general direction of westward—I mean offshore.

A. Well, of course, when I stopped lots of times, of course, she would swing around.

Q. What swung her around? A. The sail will.

Q. Which way was the wind?

A. There was very little wind. [335]

Q. Well, which way was it?

A. Westerly, I should say.

Q. You fixed your position twice on your watch by head-on bearings? A. Yes, sir.

Q. And you found her drifting, did you?

A. Yes, sir.

Q. Which way? A. East southeast magnetic.

Q. On each occasion? A. Yes, sir.

Q. And it was after that that you would order the engines to run slow?

A. No, I did not move the engines after eight o'clock in the morning; I was not up there to do so.

Q. After you got on to the bridge, did you stay on the bridge then continuously after twelve o'clock?

A. No, I would not say I stayed up there continuously, I was up there a great deal of the time, though.

Q. Were you up there until you passed the North Farallone? A. No, sir.

Q. Were you up there until you passed the North Farallone? A. Yes, sir.

Q. You took the bearing of Noonday Rock?

A. Yes, sir.

(Testimony of J. Evelyn.)

Q. Did you or Captain Ford?

A. Captain Ford and myself took it.

Q. Where did you stand to take that bearing?

A. I stood on the starboard side of the compass.

Q. You stood on the starboard side of the compass? A. Yes, sir.

Q. Was it a compass bearing?

A. A compass bearing.

Q. And Noonday Rock was on your port; is that correct? A. That is correct.

Q. And when you were abeam of Noonday Rock you took the bearing of the compass?

A. Well, I stood on the starboard side. The compass was in front of me. I don't say it was a compass bearing.

Q. Did you use the compass in getting the bearing? A. No, sir.

Q. What did you stand on the side of the compass for, then?

A. That was the best position for me to take it, I thought, so [336] that I could get it in a line with the window and tell just when I was abeam of it.

Q. You took it off the window and not off the compass, did you?

A. I got it in a line with the window—the window sill, for instance.

Q. Then you took it off the window and not the compass, didn't you?

A. Yes, I suppose you could put it that way.

Q. How is that?

A. I say I suppose you could put it that way.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, ET AL., PETITIONERS,

vs.

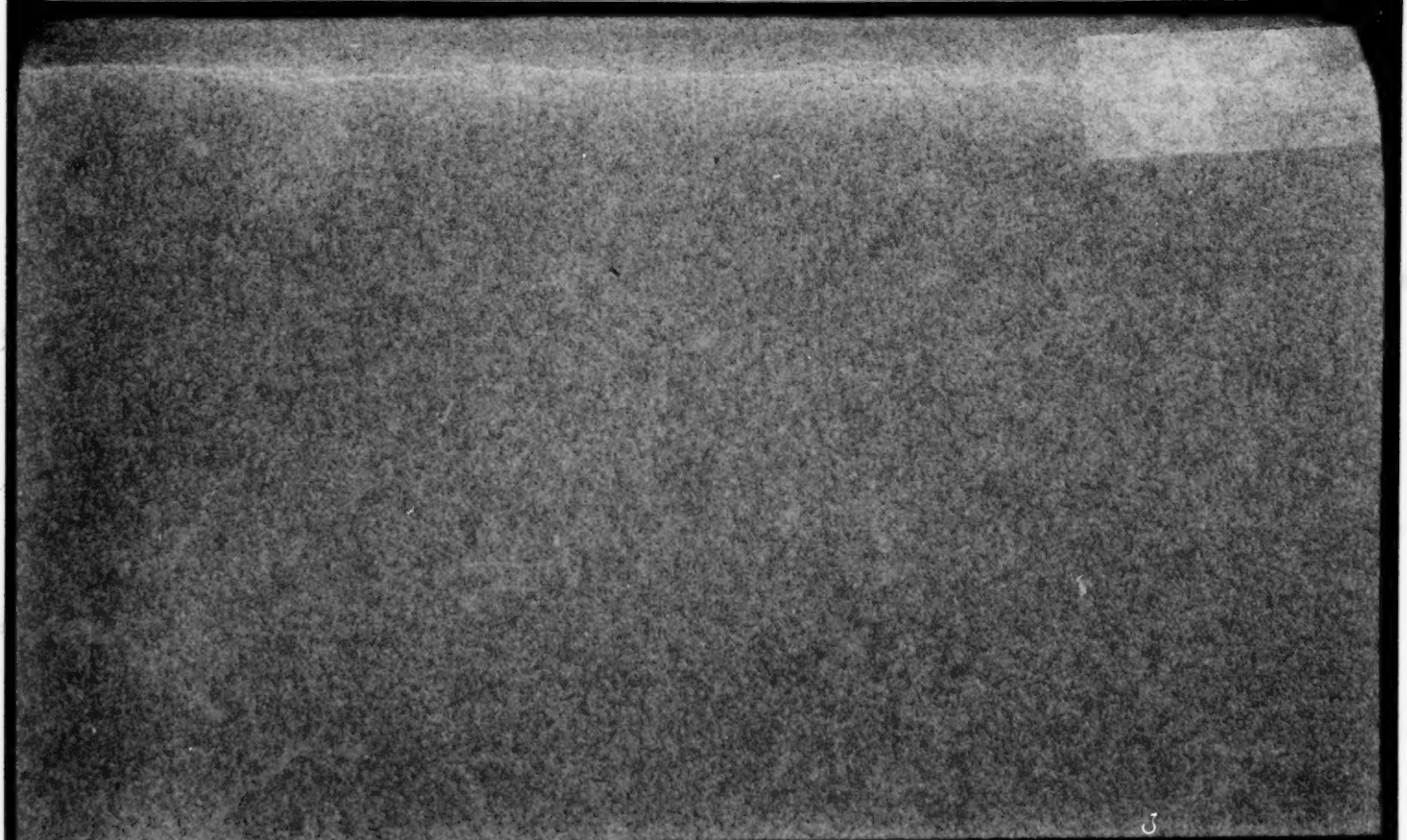
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1958

CERTIORARI GRANTED APRIL 28, 1958

(31,708)



No. 4602

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.

(Pages 417 to 833, Inclusive.)

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

(Testimony of J. Evelyn.)

Q. Did you take the other bearings off the window, too, the North Farallone?

A. Yes, I took that in the same manner.

Q. And that was off the southern island or southern rock of the North Farallone group, was it?

A. That is what I call it.

Q. Was your window open when you took that bearing? A. I don't remember.

Q. It may have been closed?

A. It might have been closed.

Q. In taking that bearing, did you just stand behind the compass and when Noonday Rock came into the window you took the bearing?

A. I took the bearing when it was abeam, and noted the time at the same time. It was the time I wanted to get when the buoy was abeam.

Q. Well, how did you know it was abeam?

A. We were not very far off it.

Q. How far off it were you?

A. I might have been half a mile, or it might have been a little bit less or a little bit more.

Q. Weren't you a mile off it?

A. I don't know whether we were a mile off; we may have been.

Q. Just tell me how you took that bearing, with reference to the window. The object came to view in the window, did it not? A. Yes.

Q. And when it came into view, you figured that was the time to take the bearing?

A. No. I was looking at the ship's head. [337] The ship's head was on east magnetic, and I could

(Testimony of J. Evelyn.)

easily judge when the thing was at right angles to me.

Q. Just by looking through the window?

A. Certainly.

Q. Did you look along the ship's head?

A. I was looking at the compass, too, looking at the ship's head in the compass.

Q. Did you take it off the compass, then, or off the window?

A. I didn't take the abeam bearing off the compass.

Q. Did you take it off the front of the wheel-house? A. I was in the wheel-house myself.

Q. You were inside of the wheel-house?

A. Yes, sir.

Q. Did you take it through the window?

A. Yes, I took it through the window.

Q. As the object appeared in the window, the first time it appeared in the window then you figured that it was at right angles with the ship?

A. Yes, sir.

Q. And that is the way you got your bearing?

A. Yes, sir.

Q. When you came abeam of the southernmost island of the North Farallone group did you take a bearing of that island in the same manner that you did of the Noonday Rock buoy? A. Yes, sir.

Q. Was that off your port or starboard side?

A. That was off the port bow.

Q. It was off the port bow?

A. I should say it was off the port beam.

(Testimony of J. Evelyn.)

Q. Off the port beam? A. Yes, sir.

Q. You say Captain Ford helped you take those bearings? A. Yes.

Q. How did he assist you in taking them?

A. He stood on the starboard side in front of the wheel-house and looked in a line along the front of the wheel-house and took it that way.

Q. He took the bearing along the front of the wheel-house? A. Yes, sir.

Q. And you took it through the window?

A. Yes; I was inside the [338] wheel-house and he was outside.

Q. Who took the time?

A. I noted the time inside the wheel-house.

Q. Did he give you the mark signal from the outside?

A. Yes, he sung out when she was on, and I could see when she was on myself, and I noted the time at the same instant.

Q. Do you know whether he took the time also, or just yourself? A. No, he sung out to me.

Q. Did you ever talk with any of the men that came out in these small boats? A. No, sir.

Q. Never had any conversation with them at all.

A. No conversations.

Q. They brought the San Francisco papers out to you, didn't they? A. Not to my knowledge.

Q. Didn't you ever see any? A. No, sir.

Q. Not one San Francisco paper while you were out there? A. Not one.

(Testimony of J. Evelyn.)

Q. They brought your mail out to you, didn't they?

A. Not to my knowledge; they never brought any out to me.

Q. Didn't they bring it to other members of the crew? A. Not to my knowledge.

On redirect examination, the witness testified as follows:

Mr. GREEN.—Q. Have you with you the paper upon which you made your original figures at the time you took these bearings, and noted the times?

A. Yes, sir.

Q. Referring to a sheet of paper dated at the top "October 12, 1924," in whose handwriting are the writing and figures upon this sheet of paper?

A. Mine.

Q. When did you make those notations?

A. At the time, just after I noted the time and took the bearings. I worked them out in the wheel-house, or in the chart-house, rather, in back of the wheel-house.

Mr. GREEN.—I offer this sheet of paper and the writing [339] and the figures thereon and ask that it be admitted in evidence and appropriately marked.

(The document was marked Defendants' Exhibit "E.") [340]

TESTIMONY OF R. GISBOURNE, FOR DEFENDANTS.

R. GISBOURNE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am one of the defendants in this case. My home is at Ladysmith, British Columbia. I was born there. I am a citizen of the British Empire and have always been since my birth. I am a seaman by occupation. I have followed the sea nine or ten years. On the 12th of October last I was attached to the "Quadra." I joined her the night before she sailed from Vancouver. I was hired by Captain Ford. I did not know what cargo the "Quadra" was carrying at the time I signed on. I did not learn what kind of a cargo the ship had until we were out at sea, about a day out, I think. I signed on for a voyage to Mexico and return. Neither Captain Ford nor anyone else told me before I sailed that any of the cargo was going to be unloaded before reaching the port of destination. I found that out when I was off the coast here. I saw cargo unloaded from the "Quadra" into small vessels. I took part in that unloading. I was working down in the hold most of the time. I signed on as an A. B. Apart from the officers and members of the crew I do not know any of the defendants in this case and never saw any of them prior to our leaving Vancouver. I saw the Crivello Brothers testifying here in court. I never

(Testimony of R. Gisbourne.)

saw them before. I never saw Pensotti and McKenzie before coming into this courtroom, or Allen and Neilsen. I do not know the names of any of the small vessels that came alongside. My duties were such that I never was in a position to see the names of any of the boats. I was a winchman and all I could do was to look after the winch. I was winchman on the "Quadra." The winch was on the forecastle-head. They were friction winches, that is, winches operated by lever, and they were bad and all that I could do was to handle them as it was. Any duties that I performed in connection with unloading liquor at sea into small [341] boats was under the direction of Chief Officer Harris and Captain Ford.

On the day that the "Quadra" was seized by the "Shawnee" the tow commenced somewhere around noon-time. In the forenoon I was working below deck but at the time the tow started, at the time that the "Quadra" started under way, under tow of the "Shawnee" I had just come up on deck.

Mr. GREEN.—Q. Were you given any orders by the chief officer at that time? A. Yes, sir.

Q. What were those orders?

A. To keep a lookout on the forecastle-head and watch the "Shawnee" and if anything unusual happened to notify him at once.

Q. Pursuant to those orders where did you station yourself?

A. On the forepart of the forecastle.

Q. Was the "Shawnee" in plain view from there?

(Testimony of R. Gisbourne.)

A. Yes, sir.

Q. Subsequent to that time did you notice anything unusual happening on the "Shawnee"?

A. I did.

Q. What was it?

A. I seen them take a cast of the lead.

Q. What do you mean by that?

A. The sounding machine.

Q. In your experience as an able-bodied seaman over the period of years you have stated, have you had occasion to see many soundings taken?

A. Yes, many.

Q. Have you taken many yourself?

A. I have.

Q. Have you assisted in the taking of a great many? A. Yes, sir.

Q. And you are familiar with sounding machines and their operation, are you? A. Quite familiar.

Q. What activity did you notice on the "Shawnee" in that regard, in connection with taking a sounding?

A. I seen an officer, what appeared to me to be an officer, and a man standing by the [342] sounding machine.

Q. Where was the sounding machine?

A. On the portside of the boat deck.

Q. After you noticed that what did you do?

A. I went right to Mr. Harris and reported.

Q. Where was Mr. Harris?

A. He was right by the bridge.

Q. Where was he—was he on the main deck?

(Testimony of R. Gisbourne.)

A. Yes, sir.

Q. In what room, do you remember?

A. In the captain's room.

Q. In the captain's room? A. Yes.

Q. And that is below the bridge, is it, on the main deck? A. Yes, sir.

Q. Did you tell Mr. Harris what you had seen?

A. I did.

Q. What did Mr. Harris do then?

A. He said, "That will do, Bob; it is two o'clock, that will do."

Q. Do you know where he went? A. No.

On cross-examination, the witness testified as follows:

Ladysmith is about 58 miles from Vancouver. All of my seaman activities have been out of Vancouver; they have been mostly deep-water vessels. I always shipped either as seaman or boatswain. I am pretty familiar with the waterfront of Vancouver; that is where I get my employment. I am pretty well acquainted with the different ships that come in and the different companies that own the different boats. I have been employed mostly on Canadian Government Merchant Marine boats but I have shipped on other boats. One becomes very familiar with the different ships that come in and out of the port. I had only been back from a deep-water trip approximately a month at the time I shipped on the "Quadra." I was not looking for other employment to go out [343] to see during that month, I was home. I did not spend any of

(Testimony of R. Gisbourne.)

that time at all down on the waterfront. I do not know who owns the "Quadra," and had no idea. I had heard of the "Quadra" before; I had not known her but I had heard of her. I had seen the "Malahat" numerous times before that. I did not know what run she was on. At the time I knew her she was carrying lumber. I did not know her after she commenced to carry liquor, I never knew anything about that; I never heard of the "Malahat" or any other boat going out of Vancouver with liquor. I never heard of the "Odena." I never heard of the "Erskine." I only knew the "Coal Harbour" just since I seen her out here; that was the first time. I did not know her in Vancouver. I never heard of the "Jesse" or the "Ironbark." I did hear of the "Kiltuish." The first time I heard of the "Kiltuish" was out here. I never heard of any of those boats plying in and out of the port of Vancouver prior to that time. I never knew the "Principia." I never heard of those boats that were carrying liquor out of Vancouver down the coast. The way I happened to get my job on the "Quadra" was one of the boys told me there was a job on her. That was Cavanaugh. He was a member of the crew and he told me there was an A. B's. job there. I believe he had already signed up. He did not tell me where they were bound for. I have signed on ships without knowing where they were bound for. I was interested in a way to know where they were bound, to know where any ship was bound on which I signed. I

(Testimony of R. Gisbourne.)

did not make any inquiries. I have been shipmates with Cavanaugh once before. I did not inquire of him where the ship was going or what the ship was carrying. I did not ask him how big the ship was, I already knew that. I did not ask him who the captain of the ship was. I didn't make any inquiries at all of Mr. Cavanaugh with reference to the "Quadra," or her cargo, or where she was [344] going, or her captain, or anything, I didn't have the job then. I went on board the "Quadra" seeking employment, and I saw Captain Ford. That was on September 9th, the day before she sailed. I had a conversation with Captain Ford. He told me the "Quadra" was bound for Mexico. He didn't say anything about the cargo. As a rule it is customary to tell the crew where the vessel is going, to what port the vessel is going. He did not inform me how long the passage would be. I didn't ask him. I was interested in knowing that but it is very seldom we ask the captain how long we are going to be gone. As a rule the captain does not know until he completes his voyage. It is not necessary that the captain should give us the probable length of time that they will be gone on a voyage. I signed the articles that day. I came aboard about five o'clock after that. I believe they were loading, I think they were loading that day. I saw what they loaded—liquor. I can't remember whether the hatches were off, or not. When I went aboard at five o'clock I had my personal belongings with me and I took them down to

(Testimony of R. Gisbourne.)

the crew's quarters; the crew's quarters are underneath the forecastle-head. I saw the cargo there then. I did not see anything else but liquor, to my knowledge. As far as I could see she was loaded, practically loaded completely at that time with liquor. The top part was all I could see. All I could see was liquor. That did not arouse any suspicion in my mind, not the slightest bit in the world. At that time I had not known anything about the rum running down to the coast of the United States. None of this liquor was stowed on the main deck, on the upper deck, not in the forepart. At that time I had not gone about the afterpart of the boat. I just put my things forward. When we left the pier or wharf there were some barrels stowed on deck. When we left the hatches were battened down. [345] We had different hours on duty, we were changed. When we started we had four hours on and four hours off. I don't remember what time we left the pier, I can't remember whether it was forenoon or afternoon. When the "Quadra" left the pier she went right to sea. We stopped in the Straits. I don't remember how long we stopped there. I believe we cast anchor there. I could not make any estimate at all of the length of time. When we stopped we were trimming cargo, making it safe for sea. That is all we did. I was helping trim cargo. I was forward most of the time. I fixed up the lines forward, getting ready for sea, and then I went aft and put lines around the barrels and made them

(Testimony of R. Gisbourne.)

fast. That is about all. I was lashing the barrels. At that time I saw the barrels aft. I cannot say that at that time I saw any more of the cargo except the barrels aft than when I first went aboard ship; just the same amount of cargo. All I saw was liquor and I think there were some barrels of oil. I do not think we made any other stop in the Straits except that one. I don't remember. We may have but I don't remember that. I did not see the "Kiltuish" or the "Odena" alongside of us that night. I would say that they were not alongside of us that night. Neither of those vessels, the "Kiltuish" or the "Odena," or "Oden" were alongside of us that night between the hours of nine and eleven o'clock. I will say positively that there were no cases of liquor transferred from either of those vessels to the "Quadra." I will say that positively. On the next day, the 11th of September, I do not remember what my hours on duty were. I did not see the "Kiltuish" on that day. I would say that the "Kiltuish" did not tie up alongside of us that day and discharge a lot of liquor, a number of cases of liquor, to the "Quadra." I am positive of that. The next day, the 12th, that is when we passed the Lightship, or near the Lightship, I did not see the [346] "Kiltuish" again that day. I will say that she did not discharge any liquor on to the "Quadra" on that day.

On the way down I was working around the ship and sacking cargo, sacking liquor, taking liquor out of cases and putting it into sacks. That is the

(Testimony of R. Gisbourne.)

first time I have ever transferred cargo from one character of package to another at sea, that is, I mean in that line. That is a very unusual proceeding. It looked mighty funny to me. I remember when we arrived off the port of San Francisco. When we reached a point opposite the Farrallones we stopped. We were in and around that neighborhood from the time we arrived here until we were seized by the "Shawnee." We may have gone further south but not to my knowledge. I didn't know where she was going to particularly, she was around near that neighborhood. She stuck around outside of the Farallones for the rest of the time. During that time we were sacking liquor. I don't remember the date when the first small boat came along, I just remember the occasion. I helped load liquor on that first boat. I saw the boat. I did not see the name of the boat. I didn't see the name of any boat that came out there. I don't know the name of any small boat that came out there. I could not recognize any of the men that were out there on any of these small boats. I saw the "Malahat." I believe we did tie up alongside of her once and I think we transferred a lot of liquor from the "Malahat" to the "Quadra" and put a lot of empty fuel barrels aboard the "Malahat" from the "Quadra." I saw the "Coal Harbour." I believe we got some liquor from the "Coal Harbour." The "Malahat" and the "Coal Harbour" went away before we were seized but I don't know whether they went home, I don't know where they went, I

(Testimony of R. Gisbourne.)

know they left. I couldn't tell when it was. I couldn't tell whether it was a day or three days. I don't know whether there was a small boat [347] that brought out a bunch of sacks. It did not to my knowledge. We had lots of sacks. I didn't see a new bundle or a new lot of sacks delivered to the "Quadra." I don't know whether they were, or not. I believe there were some that came over from the "Malahat." It was when we were alongside that they put them over. They did not come in the small boat. They were transferred on to the "Malahat" while the "Malahat" and the "Quadra" were tied up together. I couldn't say how many there were, whether there were 25 or 30, or whether there were more than four or five. They were just shoved over. I was on the "Quadra" helping to pull them in. We put them down on the deck of the "Quadra" and left them up on top. I think there were barrels on the forward part of the "Quadra." I did not have the handling of them.

When the "Quadra" was seized by the "Shawnee" I was down below in the hold. I came up from the hold around 12 o'clock. At that time the "Shawnee" was off the port quarter. She was not very far away. I heard the racket and came up; somebody hollered that the revenue cutter was there, I believe. That naturally interested all of us. I was interested at the time in the revenue cutter, and I came up to get my dinner too. I heard one shot from the "Shawnee." As far as my knowledge goes it was only one. That was when

(Testimony of R. Gisbourne.)

I was coming up. I did not pay any attention to whether the "Shawnee" was stationary at that time or as to whether the "Quadra" was stationary at that time. I do not know whether it was in motion or not. I could not say which way we were headed, I did not look. I looked at the "Shawnee." I did not see any land when I came up—I did not look to see any land. I could not say how long it was after I came up before officers from the "Shawnee" came over to the "Quadra." I went on the main deck just abaft the hold. I was [348] on the port side. I don't remember whether the "Shawnee" was opposite us then, or not, I think she was just laying off of us, that is all I know. Something like three or four boat lengths. I don't remember how long we stayed there in that place. I don't remember how long it was after that that the tow-line was attached. I was on duty until five o'clock. I came off duty at 12 o'clock. I believe I stayed on deck until the "Quadra" started to move in tow. Chief Officer Harris called me just when the tow was starting. He called me from the deck, the upper deck, the same deck I was on. He was standing by the bridge, by the captain's cabin. That was on his port side. I went there and received his orders. He told me to go out and watch the operations of the "Shawnee." I went out on the fore-castle-head. I walked along the deck, the deck was clear, partly clear. I did not have to climb over any barrels. There were some barrels there but there was a place to walk across all right. I do not

(Testimony of R. Gisbourne.)

think they were clear across the forward deck. I am not sure but I don't remember of climbing over any barrels. I did not stand on any barrels. I did not have any glasses—I just used the naked eye. I stayed in that position on the forecastle-head until two o'clock. I did not have a watch. Mr. Harris told me it was two o'clock. I relied on him for that. When I went back and told him they were going to take the sounding he said "That will do, Bob, it is two o'clock." I got my dinner at two o'clock or shortly after. When I saw the "Shawnee" taking a sounding I saw some land ahead. I presume that what I saw was the Farallones. They were a long ways ahead. I am not judge of distance. It was more than one or two miles. I could not tell whether it was three miles or ten miles away. It looked like an island to me. I don't remember how many of them. I think there were two or three rocks sticking [349] up. It looked like an island, I don't know how many of them. I did not see Noon Day Buoy to my knowledge. I would not have known it if I did see it. I had never seen the Farallones before that time; that was the first time I had noticed them. I had seen land while we were lying out there, I saw the land but I didn't know what they were, it was my first trip out here. I would not say that the land I had seen was the same land I designated as the Farallones. While we were out there about three weeks we were off and on out further and although

(Testimony of R. Gisbourne.)

I had seen land there I would not be able to recognize whether it was the same land, or not.

At the time I saw them taking the sounding the "Shawnee" was a tow length from the "Quadra." I could not say whether they were three ship lengths apart, or not, because I don't know how long the tow was. I should think it was fully four ship lengths away. I did not hear any orders given on the "Shawnee." I could not hear anything that was said on the "Shawnee." I saw people on the bridge of the "Shawnee" but I could not recognize anybody. I do not recognize Captain Howell here as one of the men on the bridge. I did not see an officer on the bridge that I could recognize here in court to-day. There were two men by the machine and one down on the main deck when this sounding was taken. They let the line over right aft. I saw them drop the lead down. I did not see them bring it up, I did not wait that long. All I saw was the lead dropped over the stern. The men's quarters on the "Quadra" are forward. There is a forecastle-deck. I have taken a good many soundings myself. I don't know that it is not a little unusual to take a sounding with a vessel in tow but I know that it isn't with a ship under way. I have never myself taken a sounding with a ship in tow. I would not say as [350] an experienced sounding machine man that it was a little unusual to take a sounding under those conditions. I think it could be quite easily done. I didn't wait to see the results or what happened after the sounding line was

(Testimony of R. Gisbourne.)

put down; I don't know whether the sounding line was brought up, I didn't see them bring it up and read the sounding. I reported to Chief Officer Harris, and at that time he was right by the bridge, by the captain's room. I think he could see the "Shawnee" from there, that is, he could see the stacks, that was about all he could see. When I made my report to Chief Officer Harris I think he went on the forecastle-head, I seen him going that way. I just seen him start and I looked and went right down below and got my dinner.

On redirect examination, the witness testified as follows:

I had heard of the "Quadra" before I sailed on her, I heard of her a long time ago when she was in the Government service in the capacity of a light-house tender. That was for the Canadian Government. I remember the "Malahat" when she was getting built. Afterwards she was carrying lumber, I think, or general cargo or something. The men that came out to the "Quadra" in the small boats were not dressed like any of the defendants are here in court now, they were just dressed in overalls and caps. I could not see the forward bridge of the "Shawnee" while she was towing the "Quadra." The tow, of course, was from the stern of the "Shawnee." After I had my dinner I came up on deck again and went up forward and stayed there for a while and went below again and came up. After I came up from my dinner I met Sargent,

(Testimony of R. Gisbourne.)

one of the defendants here and one of the members of the crew of the "Quadra." He had a camera and he took a picture. Referring to this small snapshot [351] I recognize myself as the figure in the foreground. I recognize the figures on the bridge. I recognize the picture of Captain Ford. I recognize the pictures of Mr. Austerman and Mr. Patterson of the coast guard officers. When I was on the forecastle-head of the "Quadra" watching the "Shawnee" those men were stationed on the bridge. When Sargent took the snapshot he was just this side of the windlass, just starboard of the windlass. That picture was taken shortly after I came up on deck from having my lunch. I was about half an hour at my lunch.

On recross-examination, the witness testified as follows:

When I signed the shipping articles for the voyage on the "Quadra" and when I saw all the liquor on her I had a pretty good idea that she was not in the Government service then. I could not tell how long it was prior to the time I signed on that she was in the Government service as a lighthouse tender, but it was a long time ago, it might have been anywhere up to seven years before that.

Mr. GREEN.—I offer this photograph in evidence, your Honor, and ask that it be marked our exhibit next in order.

(The photograph was here marked Defendants' Exhibit "F.")

TESTIMONY OF E. SARGENT, FOR DEFENDANTS.

E. SARGENT, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am one of the defendants in this case. My home is in Vancouver. I have lived in Vancouver three years. I was born in Vancouver. I am a citizen of the British Empire. I was an oiler on the "Quadra." I joined her around about the first of September. I obtained my position through Mr. Mason, the Chief Engineer. The engine-room crew comprised three firemen, two [352] oilers and three engineers. The chief engineer was Mr. Mason; second engineer Mr. Phillips; third engineer Mr. Winterburn. Three firemen: Mr. Hastie, Mr. James, Mr. McClellan. Another oiler besides myself, A. Cavanaugh. At the time I joined the vessel I knew what the cargo consisted of. I signed on for a trip to Mexico and return as per the ship's articles that are in evidence here. At the time that I signed on, or at any other time before I left Vancouver, no one told me that there was any intention on the part of the Captain or anyone else to unload a part of the cargo or all of it before we reached the port of destination. I do not know any of the defendants in this case outside of the Captain, the officers and the crew of the "Quadra." At the time we left Vancouver and until after the arrest in this case I never knew or heard of the defendants Belanger or Quartararo. I remember seeing the Crivello

(Testimony of E. Sargent.)

brothers testifying here on the witness-stand the other day. I never saw them before that. I never saw the defendants Pensotti and McKenzie or Allen and Neilsen. I only saw them in court here. I never took part in the unloading of any of the liquor from the "Quadra." I never was before in a vessel sailing down the west coast of the United States laden with liquor. I have been following the sea since I was 14 years old; I am now 24 years old. I remember the day the "Quadra" was seized by the coast guard cutter "Shawnee." I was working in the engine-room at the time and I heard someone up on top say there was a cutter coming. I thought I would go up and take a look. I went up and had a look. I saw it was a white vessel; I didn't know what it was but I heard someone say it was a cutter, and I saw it was white, and I ran forward and got my camera and thought I would take a picture of it.

Mr. GREEN.—Did you take a photograph of the "Shawnee" at that time? [353]

A. After she came up I did, yes.

Q. I show you a snapshot and ask you if you can identify it.

A. Yes, that is the one I took.

Q. Where were you when you took this photograph? A. On the stern, right on the stern.

Q. What was the "Shawnee" doing at that time?

A. She was just coming around the stern and was coming up like on the port side.

(Testimony of E. Sargent.)

Q. She had just come across the stern and was making the turn? A. Yes, coming around.

Q. Did you see any men on the deck of the "Shawnee"?

A. I saw some men on the deck, yes.

Q. Did you see any men on the bridge?

A. Yes, there were a couple of men on the bridge.

Q. Did you see any men on the flying bridge on top of the pilot-house?

A. No, I never saw any men there.

Q. Were there any men there? A. No.

Q. Was there one man there, or any more than that, at that time?

A. No, there was nobody there.

Q. And that was the time that you took this picture? A. That is the time I took that picture.

Mr. GREEN.—I offer the picture in evidence and ask that it be appropriately marked as our next exhibit.

(Defendants' Exhibit "G.")

Q. I show you an enlarged photograph and ask you if you recognize it?

A. Yes, that is an enlargement of the small one.

Q. An enlargement of the small picture that has just been introduced in evidence? A. Yes.

Mr. GREEN.—I offer the enlargement, if your Honor please, and ask that it be appropriately marked as a defendants' exhibit. [354]

The COURT.—Yes, it will be marked next in order.

(Defendants' Exhibit "H.")

(Testimony of E. Sargent.)

On cross-examination, the witness testified as follows:

I signed on on September 1st. I did not have any talk with Captain Ford then or with Captain McKay. The articles were handed to me by the mate, I think it was the first mate; it was not Mr. Harris, another man was there, I don't know who he was. I don't know whether it was the mate, or not; it might have been the shipping master, I don't know who it was. I think it was an officer of the "Quadra," but I don't know which one it was. I have not the slightest idea. I was alone. Chief Engineer Mason was not with me. I had talked to Mason a couple of days before. When I went to the boat I did not ask for anybody; the first man I saw when I went below was the Chief Engineer. I asked him if there was a chance of a ship. He said he didn't know for sure but asked me to leave my address and he would let me know. He let me know a couple of days after. Then I went back to the ship again and saw him and he told me to start to work. I signed the articles that day in the captain's cabin. I never had any talk with Mason then, he just told me to go to work. I signed the articles a couple of hours after he told me this. Somebody from up above hollered down to me, "Come up and sign the articles," and I went up in response to that call. They did not call my name, they asked if there was anybody down there to sign articles. I was not told where the vessel was bound, nor did I ask, I saw that on the articles. I did not

(Testimony of E. Sargent.)

ask how long approximately we were going to be gone. They were putting cargo on deck, I think some of it was on. It was whiskey, liquor, I suppose. They were loading off and on up till about the 10th. I was on duty [355] all that time, whenever my hours of duty were. I was not out there watching them load. I seen some provisions put on. I cannot say that I saw anything except oil for the ship, provisions for the ship, and whiskey or liquor being put aboard. I did not talk to anybody about the cargo that was being put on. I am pretty well acquainted with the different boats that ply in and out of Vancouver. I know and can recognize when I see them most of the local boats that come in and out of the harbor. I know quite a few of the coastwise boats, I would not say I know them all. I do not know that seamen along the waterfront there can give you a history of pretty near every boat that comes along; I don't associate with many seamen. I keep to myself mostly. As soon as I come off the boat I go up town, I do not stick around the waterfront. I do not associate with anybody that talks about boats; I do not hold any conversation with anybody about boats, that is, very seldom.

On the 12th of October, 1924, I was on duty for a while. My hours on that day were from 6 to 12 in the morning. I went off duty at 12 o'clock. The "Quadra" had been moving that morning off and on. I could not say how long the engines had

(Testimony of E. Sargent.)

been running that morning, they were running for a while and stopped for a while and running again.

By "for a while" I mean for an hour. I do not say they ran for an hour, I would say a short time, anywhere from half an hour to an hour, I suppose, maybe more or less. They were not running when I went off watch, they had stopped. I guess they were stopped close to an hour; I don't know, I would not say. It might have been half an hour, something like that. My principal duties as an oiler are keeping the engines from running hot. I was busy that morning. I did not go up on deck until I heard somebody say there was a cutter. I do not know how much of my time was [356] lost when I heard there was a cutter there; I know I did not bother any more about the watch when I heard there was a cutter. You are not supposed to leave the engine-room on any ship, but I went up anyhow. I disobeyed orders in that respect. The engines were not running, though, when I went up. When I went up on deck I saw some of the ship's crew. I saw Captain Ford on the bridge. I never took particular notice whether anybody was with him. I don't remember whether I saw more than one man on the bridge. I never looked close enough. I was busy looking at the cutter. She was quite a little ways off then, I would not say how far, but she was a little ways off. I did not hear any whistle from the cutter. I heard one shot. I was at the stern of our vessel when I heard that shot. I had went around, I followed the cutter around. I guess

(Testimony of E. Sargent.)

I had been at the stern in the neighborhood of five minutes before I heard the shot. I did not see what they were shooting at, I did not see where the shot went. I saw the shot hit the water. With reference to the "Quadra" I don't know where the shot hit the water, it was ahead of the "Shawnee," that is all I know. I did not see the "C–55" out there. I did not see the "C–55" when the shot hit the water. I would not say that there was a clear vision out that way where the shot hit. There was some wires that went up to the mast there, the after-mast, that was the only thing that obstructed my view. I did not see this small boat you are talking about until after I saw the shot hit the water. The first time I saw the small boat was when it was coming around towards the "Shawnee." That would be on the port side of the "Quadra." It did not come up on the side of the "Quadra," no, it came around the side of the "Shawnee," I think it was on the port side. It was just turning around when I saw it, after they fired the shot, because I didn't know what they were shooting [357] at They were just turning around. I could not say how close it was to the "Shawnee," I could not judge the distance, it was quite a piece away, I think. I believe I took this picture just before they fired the shot. I would not say for sure. I don't know for sure whether it was just before or just after; it was just around about that time; I think it was just before they fired the shot. I did not have the camera with me the first time I came up

(Testimony of E. Sargent.)

from the engine-room. The first time I came up I just took a look at the companion-way coming up from the deck and I saw the white boat and I ran back down the 'tween-decks, along the 'tween-decks and got my camera. I was not very long getting my camera. The white boat was then astern of us, coming toward the stern. I guess about four or five boat lengths from the stern. She was in motion. The "Quadra" was stopped. The "Quadra" may have been stopped for close on to half an hour, I think. I heard a little bit of the conversation between Captain Ford and the captain of the "Shawnee." That conversation was a few minutes, I guess, after I had taken the picture. I would not say how long. The "Shawnee" was slowly coming around on the port side. When that conversation started she was off the port side. I don't know whether she was moving, or not. I could not see the "C–55" tie up alongside of the "Shawnee." She was on the other side. I guess she was on the port side of the "Shawnee." I don't know whether just prior to the word that we received about the cutter being around there the winches were being worked on the "Quadra." I could not tell that down in the engine-room.

On redirect examination, the witness testified as follows: This negative which I am now handed I identify as the negative of the picture I took. [358]

Mr. GREEN.—In order to trace the photograph right from the time of taking down to the present

(Testimony of R. Lovez.)

hour, if the Court please, I would like to have this introduced in evidence as our exhibit.

(The photograph was here marked Defendants' Exhibit "I.")

TESTIMONY OF R. LOVEZ, FOR DEFENDANTS.

R. LOVEZ, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is R. Lovez. I reside in San Francisco. I have lived here in San Francisco on and off and have been here since 1896. I am a master mariner. I received my certificate in 1896, and another one in 1913 I think it was. I hold American and British certificates. I have them with me. My British Certificate of Competency was issued by the British Board of Trade on the 19th day of December, 1896. My license as master of steam vessels was issued to me by the United States Department of Commerce, Steamboat Inspection service, on the 13th of August, 1923; that is the second renewal. The licenses are renewed every five years. So I had one in 1913 and one in 1918 and one in 1923. This one issued in 1923 is the third one I received, that is, there would be the original and then two renewals. This might be called the third.

Mr. GREEN.—It may be stipulated at this time that the witness holds an American license to act as master of steam vessels of any gross tons upon the waters of any ocean, it being an unlimited license. And also that the witness is the holder of

(Testimony of R. Lovez.)

a British Board of Trade certificate of competency as master of a foreign-going ship, issued to him on the 19th day of December, 1896, in proper form as such. That is agreed to is it, Mr. Gillis?

Mr. GILLIS.—Yes. [359]

WITNESS.—(Continuing.) Since receiving my license I have served in the International Mercantile Marine, on large vessels of theirs, as master, officer and *master*. I was 17 years with the International Mercantile Marine sailing the Pacific Ocean and the Atlantic, New Zealand, Australia, Mediterranean waters. I also served with the Grace Company of San Francisco for five years as master on voyages to China, Australia, all over—Pacific waters in general. I served with the Pacific Mail; I was loaned to them by the Grace Company. I served as master on the "Colusa," the "Santa Cruz," the "Equador" and the "Venzuela." The International Mercantile Marine was known as the White Star Line and the American Line and the Atlantic Transport Line. I had command of the "Coptic." the "Bovic," the "Romanic," the "Medic" and the "Cretic." I have had 15 years experience in all in commanding large ocean going vessels. I have had 19 years experience as officer and master of large ocean going vessels. I am a member of the Royal Geographic Society, a fellow.

Since the seizure of the steamer "Quadra" in this case I have become acquainted with Mr. Harris, the chief officer of that vessel. He has submitted

(Testimony of R. Lovez.)

to me figures regarding the position of the steamer "Quadra" at the time that the same was seized by the "Shawnee." I have passed upon those figures in my capacity as an expert navigator. I have made investigations and worked out problems along those lines with a view to ascertaining whether or not Mr. Harris' figures were correct. I worked the latitude out and I looked over his vertical angle and his horizontal angle and his bearings and the general condition of the ship as regards deviation and that sort of thing. I have examined the ex-meridian altitude computed by Mr. Harris. I was not present when the observations were taken. I can only [360] take it from data given me. I have examined the ex-meridian altitude computed by Mr. Harris and I have found the figures to be correct, within very, very slight differences. I recognize Defendants' Exhibit "B" in evidence which you now hand me. I saw it about a month ago, I think. Mr. Harris handed that to me. After I had questioned him I made an examination of this paper. I questioned Mr. Harris in regard to the computations placed upon this paper.

Mr. GREEN.—Q. You testified before lunch, Captain, that you had gone over his figures and calculations? A. Yes.

Q. Are the figures and the calculations of Mr. Harris that you examined and went over the ones that are placed on the paper I just showed you?

A. Yes, I approved of them.

Q. Did you examine Mr. Harris' figures relative

(Testimony of R. Lovez.)

to the vertical angle that he took of Point Reyes at the time? A. I did, yes.

Q. Did you notice any omission from the figures that Mr. Harris made regarding his computations on the vertical angle?

A. I noticed he had not taken into consideration the dip, that is, the height of eye.

Q. Did you ascertain from Mr. Harris what kind of a day it was? A. I did.

Q. What did you learn regarding the visibility and clearness of the atmosphere, and the sunlight, on that day?

A. I should say it was a very unusual day, above normal.

Q. If you were placed in the same position that Mr. Harris was that day and had taken a vertical angle of Point Reyes would you, under the conditions of visibility, atmosphere and sunlight, have made a correction for height of eye?

Mr. GILLIS.—To which I object, may it please the Court, on [361] the ground that it is incompetent and immaterial, and assuming facts to which this witness cannot testify.

The COURT.—He is testifying, Mr. Gillis, as an expert from data which already is in evidence. Of course the question assumes that the position, as fixed by Mr. Harris, was the position where the ship actually was. It assumes it to that extent. But it does not assume anything that is not in evidence. Therefore it is a proper question for an expert to answer.

(Testimony of R. Lovez.)

A. I should have made a correction for height of eye and I should have made a correction for no height of eye.

Mr. GREEN.—Q. What do you mean by that?

A. I mean that refraction, as all seamen know, is one of the most uncertain quantities that we have, and there is nobody that can determine it exactly by proving it to his own satisfaction by a set of observations and by getting averages. It is also known that what they call the land refraction, which is caused by the effect of the sun shining on the water raises the object to above the level.

Q. What would be the effect of this refraction in taking a vertical angle of a land object from the sea?

A. The effect would be to reduce the correction to be applied to it.

Q. What would be the effect of it in simple language; what would be the effect on the object of land itself?

A. It would tend to raise the object itself,—the land.

Q. In your opinion, Captain, as a navigator would the refraction offset the correction for height of eye? A. It would, yes, and possibly more.

Q. And if the correction for height of eye had been applied by Mr. Harris under these conditions where would it have placed him, nearer to Point Reyes or farther away? [362]

A. It would have placed him, according to my calculation, about eight miles farther away.

(Testimony of R. Lovez.)

Q. And taking into consideration the height of eye, and also the refraction, is it a fact, in your opinion, that the elimination of the correction for height of eye placed him in about his proper position?

A. Yes, it did. That is the conclusion that we come to. We work both ways and the one that comes nearest to our assumed position we accept that and put the rest of it down to error due to refraction because of abnormality or normality.

Q. And upon the conditions assumed on the day in question did Mr. Harris do the safe thing in omitting for height of eye?

A. I think so. I would have done the same thing under those conditions.

Q. What was the next observation of Mr. Harris' that you checked over? A. His ex-meridian.

Q. Can you tell the jury and the Court the result of your examination of his figures covering his ex-meridian altitude?

A. He gave me an hour angle of 16 minutes from which I found out the correct declination and found my apparent time at Greenwich; he also gave me his longitude, which gave me the apparent time at Greenwich, and my mean time at Greenwich also and consequently corrected the declination for that time and I worked the altitude up with the several corrections necessary to bring it to a true altitude and from that true altitude found my zenith distance from which I deducted the corrected altitude and it gave me the latitude.

(Testimony of R. Lovez.)

Q. What was the result of this computation of yours? A. You mean the latitude itself?

Q. Yes.

A. 37:49:50—two twenty-seconds difference from Mr. Harris. [363]

Q. In your opinion, Captain, did Mr. Harris use the correct method of working his ex-meridian altitude? A. He used the short method, yes.

Q. And you have worked it out by other methods, have you?

A. I worked it out by short methods, several methods.

Q. By other methods also? A. Yes.

Q. How many different methods did you work it out by?

A. I worked it out by two other methods, two substantially good methods.

Q. Were the results of your calculations by these other methods substantially different from the result obtained by Mr. Harris?

A. Only twenty seconds.

Q. How much of a difference in distance would that be? A. About one-fifth of a mile.

Q. Were those all of the calculations you did in going over his ex-meridian altitude?

A. No. I also plotted his bearings on the chart which were taken and I also checked up his horiontal angle and found out just where his horizontal angle would cut his latitude, which would give him his position—his longitude.

Q. Can you explain at length exactly what you

(Testimony of R. Lovez.)

did in checking up these other observations of Mr. Harris?

A. There are several methods of checking up the horizontal angle. You can check a horizontal angle up by the angle given, the distance between the two points; the distance between the two points is half of the distance, of that distance; then you take the angle itself as a course; half the distance from the distance claimed in the departure column gives you the distance that you ought to place on the chart to form the circle that will cut the angles and cut the points taken and also cut your position of latitude which will be a longitude.

Q. In your opinion, Captain, is it possible for a navigator to [364] fake an ex-meridian altitude of the sun?

A. I don't think so. It would take him a long time to do it.

Q. Could it be done in a length of time?

A. No. It would take him several hours to do it.

Q. I mean in a length of time?

A. Yes, in two or three hours he probably could.

Q. In the length of time stated in the evidence here could Mr. Harris have faked that?

A. No, he could not.

Q. Is there any way in which you work that out from the assumed longitude furnished you by Mr. Harris and the ex-meridian altitude that you can say that he must have been correct?

A. Yes, that can be worked.

Q. Have you any figures on that in your book?

(Testimony of R. Lovez.)

A. I have. The latitude that he took even as an ex-meridian can be worked out as a longitude observation, being a low altitude.

Q. Please explain that to the Court.

A. Here it is, Mr. Green.

Q. Will you please explain it to the Court and the jury?

A. Your Honor, and Gentlemen of the Jury: The system of ascertaining the longitude by observation, with an assumed latitude, knowing the hour angle and the declination of the longitude by account—we know those, although they are assumed—in that way we work out an ordinary chronometer sight, which gives us a longitude. By that hour angle that we obtain from the longitude, that is, the apparent time at ship, we ascertain a bearing of the sun at that time. The sun in this particular instance bore south 6 east, close to the meridian. From certain tables we have, Captain Leckey's tables, we find out by the latitude a correction, and also table B we find out the correction, we arrive at plus or minus corrections—two plus would give you a plus correction; that is the error due to one mile [365] difference of latitude. Every mile that the latitude is out is equal to 12–22. In this instance the assumed latitude was 37–49. We found out by amplitude that the latitude was 37–50. It was one mile then to the north. The latitude by account was one mile south of the true latitude. So in applying that correction to the longitude obtained by this problem we applied the correction

(Testimony of R. Lovez.)

from the north to the east, because it is the opposite to the bearing of the sun at that time, which gives you a longitude at that time of 123-23-18 west corrected longitude. So we have the latitude by ex-meridian and we have the corrected longitude at that time. That gives you a fix of that position.

Q. Where does that calculation of yours fix the position of the "Quadra" upon the chart?

The COURT.—Here is a red pencil. You had better mark that in a different color, so that we can differentiate it from the others?

A. It is about there.

Mr. GREEN.—I have marked the position in red pencil surrounding it by a circle, and marked it at the end of a line leading to it "Position L."

Q. Captain, is the position you just fix upon the chart the correct position of the "Quadra" at the time and place in question, according to your calculations? A. Yes.

Q. How many miles from the North Farallones is that position?

A. From the North Farallones, about 13.6.

Q. 13.6 of what? A. Miles.

Q. Nautical miles? A. Nautical miles, yes.

Q. And in what direction from the North Farallones? A. North 75 west, true.

Q. The position of the ship from the North Farallones? A. From the North Farallones.

Q. I do not understand that?

A. This is the North [366] Farallones, is it not?

(Testimony of R. Lovez.)

Q. Yes. A. North 75 west.

Q. What position would it be on here?

A. Magnetic.

Q. Bring it down to here.

A. West half south magnetic.

Q. From the calculation just recited by you, Captain, do you say, in your opinion as an expert navigator, that the position you have just plotted upon the chart as being the position of the steamer at the time and place in question must have been its true position?

A. I should say so, yes, as near as you could get it.

Q. Did you go over Mr. Harris' figures in computing his horizontal angle? A. I did.

Q. Did you find them to be correct? A. Yes.

Q. What is your opinion, Captain, regarding the reliability of one sounding?

A. I should say one sounding is worse than useless, myself. If soundings are made, they should take lines of soundings.

Q. What is your opinion, Captain, of the head-on bearing?

A. I think it is accurate if it is properly taken, within a very small degree—would not be more than a degree out, anyway.

Q. How much of a difference in position would a degree out in the bearing make?

A. It would make five miles difference in 300.

Q. In your opinion, would the position of a mast

(Testimony of R. Lovez.)

between the eye of the observer and the bow of the vessel make any more difference than a degree?

A. No. I should not think so, if it was carefully taken by looking at both sides of the mast, at the same time the object did not come over on either side too much—pretty well located.

Q. Would you mind looking at this chart for a moment, Captain? Calling your attention to the sounding marked "44 fathoms," which [367] has been heretofore encircled and marked "Position Q," how great an area of the ocean's bottom is represented by that sounding 44 on the chart?

A. I think it would take about six soundings to the square mile, something like that. I never surveyed, myself, but that is the impression I have got, the soundings per square mile.

Q. Can you tell, by the use of your dividers, how far that sounding 44 extends to the westward on that chart from the mark 44?

A. To the westward, yes. Where do you want it from, from this meridian here?

Q. No, from the position that is given on the chart, 44. A. From here?

Q. No, from the mark 44, itself. A. Yes.

Q. How far would you say, in your opinion as a navigator, that depth of 44 fathoms extended to the westward? Would it only be, in other words, exactly 44 at exactly that point?

A. No, it might be here, it might be there, and it might be here. Here is 44 over here, and 44 over here.

(Testimony of R. Lovez.)

Q. I know, but calling your attention particularly to the mark 44 surrounded by the circle and marked with the letter "Q," how far, in your opinion, would that sounding extend on the floor of the ocean in that locality?

A. It might have extended for a mile and a half or a mile. The bottom would come up like that and fall down.

The COURT.—What is the depth of water shown by that chart at the place where Mr. Harris fixed the position of the "Quadra"?

Mr. GILLIS.—About 190 fathoms.

The COURT.—Would it be possible for the officers of the "Shawnee" to make a mistake of 150 fathoms?

A. I should not think so.

Mr. GREEN.—Q. That is providing that they took the sounding— [368]

A. (Interrupting.) Took the sounding and got the bottom, no.

Q. That is provided that they took the sounding at the place that they say they took it?

A. They could not have got that sounding.

The COURT.—What I had in mind was this, if they had taken a sounding at the place where the first officer fixes the position of the "Quadra," and correctly taken the sounding,—now, that shows in the neighborhood of 190 fathoms of water?

A. Yes, something like that.

Q. Now, their figures show, the tube that was

(Testimony of R. Lovez.)

produced here, that is, the pressure tube, at the point indicated, showed 44 fathoms? A. Yes.

Q. Would it be possible for competent officers to make such a mistake as that?

A. Well, not with the intervening distance between the two—if they got a sounding they did not get it where the "Quadra" was. That is the only conclusion I could come to.

Q. That does not quite answer the question. The question is, if they took the sounding at the place at the time they said they did, at the time when she was laid alongside, that is, the "Shawnee" was laid alongside, and the "Quadra" was at the position as fixed by the chief officer, is it possible that they could have got a sounding of 44 fathoms?

A. If they took a sounding in that position they must have got it.

Q. I do not think I understand.

A. If they took a sounding when in that position they must have got that sounding.

Q. That is not quite what I had in mind. Would it be possible for a competent officer to make a mistake in a sounding with a sounding machine containing the usual glass, ground glass, or chemically-treated glass, would it be possible for him to make a difference of practically 150 fathoms? [369]

A. No, I should not think so; absolutely no. He might make an error of a fathom or so by a difference of low water and high water.

Mr. GREEN.—Q. Captain, in your opinion is it

(Testimony of R. Lovez.)

feasible to take soundings when the ship is under way? A. Yes.

Q. Have you ever done so?

A. I have taken them at 21 knots.

Q. Is it, in your opinion, possible to take a sounding when a ship is towing another?

A. Yes, it is, short soundings; it would not be advisable to take a very deep sounding, but a sounding of 44 fathoms could be easily taken.

Q. I suppose, Captain, you have had a great deal of experience with sextants? A. I have.

Q. Is it at all an unusual thing to find a sextant without an index error?

A. Very seldom you find one with an index error, because the officers always keep them adjusted.

Q. Then if the officer who owns the sextant is competent to adjust it properly, no index error will be apparent? A. No.

Q. If there is only a 10-second measurement upon the sextant, is it possible to take a 5-second reading?

A. Yes, it is on a good sextant, a well-cut sextant.

Q. How is that done?

A. Well, there are sextants and sextants; there are good sextants and bad sextants.

Q. On a good one how is it then done?

A. It is done by reading where it cuts on the vernier.

On cross-examination the witness testified as follows:

(Testimony of R. Lovez.)

All of the opinions that I have given with reference to the location of the "Quadra" have been based absolutely upon the figures that Mr. Harris gave me. [370]

Mr. GILLIS.—Q. Captain, will you give the difference between the apparent time on October 12 at 123½ west longitude and the mean time on October 12 at 120 west longitude?

A. You want the difference between what?

Q. I want the difference between the apparent time on October 12 at 123½ west longitude and mean time on the same day at 120 west longitude. Do you want some paper, Captain?

A. No. Do you want Greenwich mean time?

Q. No, the difference between the apparent time and 123½ west longitude and the mean time at 120 west longitude. A. On October 12?

Q. Yes.

A. In fact, you want a corrected time for mean time—is that what you want to do?

Q. I want to get the difference.

A. I do not quite get your point, Mr. Gillis.

Q. I will put the question again, and possibly you will get it. I want the difference between the apparent time on October 12 at 123½ west longitude. A. Yes.

Q. And mean time October 12 at 120 west longitude? A. 120?

Q. Yes. A. 48 seconds.

Q. 48 seconds? A. Yes.

Q. Will you step down to the chart with your

(Testimony of R. Lovez.)

dividers, Captain, and measure the distance between Noonday Rock and the northernmost island of the North Farallones? A. About 3.3 miles.

Q. Now, will you take your dividers and measure the distance between Noonday Rock and the southernmost island of the North Farallones?

A. This one here?

Q. No, the southernmost island of the North Farallone Group. A. 3.9 miles.

Q. Now, will you please take the ruler and shape the course of [371] the "Quadra" from the position you said she was in to a point one mile abeam of the southernmost island of the North Farallone Group?

A. Yes. The course from where she was, you say?

Q. Yes. A. You mean magnetic?

Q. Yes, magnetic. A. East one quarter south.

WITNESS.—(Continuing.) I was employed in this case by Mr. Green. He is the only man that I made arrangements with. I am looking to him for my compensation. I think I have been in conversation with him for six weeks or such a matter, just talking to him. I have not received my compensation for that work yet, that is, I have had a little bit, to keep me going.

STIPULATION.

Mr. GREEN.—I would like to ask if the request I made yesterday has been complied with as to the

(Testimony of Jacob Schybinger.)

sample sack of liquor that was taken from the "C–55," if that sack has been weighed?

Mr. GILLIS.—We have weighed them all.

Mr. GREEN.—The figures submitted by the United States Attorney on the weight of the load of the liquor on the motor-boat "C–55" at the time of seizure of 3,304 pounds is acceptable to the defense. That is stipulated to be the weight of the cargo of liquor on board the 'C–55" at that time?

Mr. GILLIS.—So stipulated. [372]

TESTIMONY OF JACOB SCHYBINGER, FOR DEFENDANTS.

JACOB SCHYBINGER, a witness called on behalf of defendants, being first duly sworn, testified as follows:

At the present time my occupation is first-class fireman, U. S. Navy. I am stationed on the receiving ship. The receiving ship station is Goat Island, in San Francisco Bay. On the 12th of October, 1924, I was first-class water tender, U. S. coast guard service, attached to the U. S. coast guard cutter, "Shawnee." I had been attached to the "Shawnee" since the 1st of February, 1924. I left the coast guard service on the 16 of November, 1924. I was honorably discharged at that time, my term of enlistment terminated then. I was on the "Shawnee" on the day that the "Quadra" was seized by the "Shawnee." I recognize the vessel shown in this photograph, Defendants' Exhibit "H." That photograph was

(Testimony of Jacob Schybinger.)

taken at the time the coast guard cutter "Shawnee" was rounding the stern of the "Quadra." I was standing on the starboard side of the "Shawnee" near the entrance to the mess hall at that time. I had come off watch at eight o'clock in the morning. I went on watch again at four o'clock in the afternoon. The "Shawnee" commenced towing the "Quadra" at about 12:35. That is the time as I recollect it. It was shortly after dinner. The first dinner that day was about 11:20; the second dinner was about 12 or 12:05, or something like that. I had the first dinner. From those facts I base my opinion that the tow started about 25 minutes to one, or half past twelve, or some time around there. After the tow started I was all over the ship, I was on the stern end, around the taffrail. I was there until four o'clock in the afternoon when I went on watch. I was just looking like the rest of the crew, watching. I know Ensign Morse. I recognize him as the gentleman who testified here for the Government. I know the quartermaster that testified here for [373] the Government with respect to taking a sounding on board the "Shawnee." While the tow was under way and I was at the stern of the "Shawnee" I saw both of those gentlemen. Ensign Morse was on the hurricane deck, the boat deck. The sounding machine on the "Shawnee" is on the port side of the hurricane deck, to the rear of the boat. I could see that position from where I was standing at that time. I saw Ensign Morse and the quarter-

(Testimony of Jacob Schybinger.)

master who has testified to taking a sounding in the neighborhood of the sounding machine while the tow was under way. I seen them taking a sounding. The tow was under way at that time pretty near a good hour and a half. As I have said, I have been attached to the "Shawnee" since the 1st of February, 1924, cruising in these waters three or four times a month.

Mr. GREEN.—Q. In your opinion, at the time the "Shawnee" seized the "Quadra" how far away were the North Farallone Rocks?

Mr. GILLIS.—Just a moment. I don't know that this man has proven himself an expert in distance, or qualified in navigation.

The COURT.—What good would his opinion be, Mr. Green, in view of the testimony on both sides with regard to the methods in which the position of the ship was located? What good would anybody's opinion be?

Mr. GREEN.—It throws some light on it, your Honor.

The COURT.—No, it could not possibly. I will sustain the objection.

Mr. GREEN.—Exception, if the Court please. For the purpose of the record I would like to ask this question, your Honor:

Q. From your experience at sea can you tell whether or not at the time the "Shawnee" seized the "Quadra" the North Farallone Rocks were more or less than 5.7 miles away?

(Testimony of Jacob Schybinger.)

Mr. GILLIS.—To which I object. The witness has not been qualified, as I said before. [374]

The COURT.—Oh, I think I will let him answer it. A. Yes, lots more.

Mr. GREEN.—Q. How far would you say?

A. A good 15 or 16 miles.

Q. That is the way it looked to you?

A. That is the way it looked to me and to everybody else on there of the crew.

WITNESS.—(Continuing.) When I went on watch at four o'clock the North Farallone Islands were about off our port beam, a little past off the port beam when I went on watch at five minutes of four.

On cross-examination, the witness testified as follows:

My watch was from four o'clock to eight o'clock, that is, from four o'clock in the morning to eight o'clock in the morning and from four o'clock in the afternoon to eight o'clock in the evening. Those were the two watches in the 24 that I was on duty. I had those watches since Saturday. We left Saturday, the day before, so that on October 11th and October 12th those were the two watches that I had. On my first watch that morning the "Shawnee" was in Drake's Bay. They pulled out shortly after I came off watch. They were there all of the time while I was on watch. Shortly after eight o'clock, when I came upstairs, they pulled out of Drakes Bay. Probably ten or fifteen minutes after I came upstairs, or something like that, they pulled out of

(Testimony of Jacob Schybinger.)

Drakes Bay. As water-tender I have charge of the fire-room on that watch. I give water to the boilers and keep up the steam; I have a fireman there doing the work keeping up the steam. The fireman is under me; he takes my orders with reference to that. The fireman on my four to eight watch was a fellow named Healy; I don't know his first name. I don't think he had been on the "Shawnee" long. He is out of the service now. I think he came on [375] the "Shawnee" in about July or August or some time around there. After I came off watch at eight o'clock I had breakfast right away; then I walked around the deck, the main deck, passing the time away. The main deck is the deck below the boat deck. I call it the main deck. The other one I call the hurricane deck, and the forecastle-deck. The one higher up where the boats are I call the hurricane deck, and the one straight forward I would call that the forecastle-deck. I was on the main deck pretty nearly all the rest of the morning until I had dinner. I only took about fifteen minutes for breakfast, ten or fifteen minutes, and then I came right out on deck. When I came up on deck we were heading out to sea. At the time I came up after breakfast we had not gotten very far out, a short distance out, probably two or three miles. At about 8:30 I seen a whaler. We were about eight miles from the whaler. The "Shawnee" kept on going right out to sea. Quite a while after that I saw the whaler again. You know I didn't keep my eye on the whaler for the

(Testimony of Jacob Schybinger.)

whole morning, just once in a while I happened to notice it. I should judge it was about an hour afterwards. I could not tell what course or approximately what course the "Shawnee" took when I came up from breakfast, I was not in the wheelhouse. I saw the land around, we were only a couple of miles from it. We were going straight out to sea; I would not say straight west, right straight out from Point Reyes, right straight out from there. That would be about west, yes, sir. The whaler was on our port beam. We saw the "Principio" that morning. That was quite a while after we passed the whaler, about two hours afterwards. We had come within four or five miles of the whaler. The "Shawnee" did not stop, she went right straight to the "Principio"; we did not stop, we went right by. We went by full speed, we went after a little boat. I don't know whether the "Principio" [376] was anchored on the Cordell Banks. I know where the Cordell Banks are all right but I don't know whether she was anchored there. The "Principio" was about, I should judge, 18 or 20 miles out from Point Reyes, straight out from there. I did not notice whether the "Principio" had her anchor chains out. I believe she did, though, I believe she was anchored. I did not see her move. Her head was pointing north. We went about half a mile past the "Principio." We had been about two hours getting out there, pretty near two hours. That would be about an hour after we passed the whaler. When we passed the

(Testimony of Jacob Schybinger.)

whaler we were past the point then, a little past the point, a little past Point Reyes. We were two miles or a mile and a half from land. The "Shawnee" a little later turned and came back toward land and went on about a mile, approximately a mile, a short distance from the "Principio." We picked up the little boat there. We were there about five minutes. I don't know what boat that was, I didn't pay any attention to it. I saw the boat but I don't know the number or the name of it. I was not interested to see what the boat was. The little boat came alongside of the "Shawnee." Then some of the officers of the "Shawnee" went aboard the little boat. They looked her over to see if there was any booze on her. Two officers from the "Shawnee" went on to the small boat and looked her over and then the two men in the small boat came off and went on to the "Shawnee" and talked with the captain and then went back again. That all consumed about five minutes. That is my best judgment, that that took about five minutes. Then the "Shawnee" came back to the "Principio" and stopped there for a few minutes, I judge, and then went south. I could not say that she went directly south, I am no navigator, but what I mean is she went south. I could see Point Reyes from there. I judged from Point Reyes that we [377] went south. We kept that course about an hour. After we left the "Principio," shortly after, I should say about an hour after, we came alongside of the "Quadra." I have been on the main deck all that time. I was

(Testimony of Jacob Schybinger.)

aft. Most of the crew were back there. I remember Dobson, Healy, Williams, Stokes. I can't think of one of the guy's names who was there, he was chief yeoman, I can't think of his name right now. I think he was the only chief yeoman there. I cannot recall any other names now; if I thought long enough I could all right. We were not standing back aft there steady, we were walking up and back on the main deck. Aft on the main deck and forward toward the mess-hall, the entrance to the mess-hall. We were just passing the time walking up and back. Dobson is not on the "Shawnee" now. I seen him the other day, he is in town here. I do not know what he is doing. I do not know if Healy is still with the "Shawnee." I heard somebody say he was discharged at his own request. That is all I know about it. All of these men were there when we came upon the "Quadra"—the whole crew was there. I mean by that except the men on watch, the men who were down below. Four men are supposed to have been on watch. I did not count the number of men who were on deck with me, but I would say nine—nine or ten, maybe more. When I first saw the "Quadra" I was near the mess-hall. We speeded up full speed and from the vibration of the ship I knew there was something wrong and we all rushed out on deck on the starboard side. I had only been eating about five minutes when I felt this sudden vibration. I went to lunch somewhere around 11:20. I went back and finished my dinner later on. I finished it just as

(Testimony of Jacob Schybinger.)

soon as they went around the stern of the "Quadra" and they fired a shot at that little boat. I was eating when the shot was fired. I was eating, they slowed up for about maybe a minute, and then full [378] speed again, they went after the little boat, and just as soon as I got out on deck they fired a shot at the little boat that got away from the "Quadra." Just as soon as they fired the shot at the little boat I went right back and finished my dinner. Dobson was on duty as water-tender at 12 o'clock. There was more than one water-tender. There was only one on duty at a watch, one water-tender on each watch. The water-tender sees everybody in the engine-room, he sees the fireman, he sees the oiler, he sees the engineer. When I went off duty at eight o'clock I cannot think of the name of the man who relieved me as water-tender, I don't just think of his name now. I know him if I see him but I can't think of his name right now. I did not pay any attention to who relieved the oiler. I don't remember who relieved the fireman. The engineer was relieved by Bohen, machinist's mate, first class. Mr. Williams was on duty as engineer when I was on duty from four to eight. The fireman was Healy. I don't remember the name of the oiler. Dobson was relieved by me when I went on duty at four o'clock as water-tender. Healy went on duty as fireman and Williams as engineer. When I went back that time to finish my dinner I was there only a few minutes, I made it short. On that shot everybody forgot to

(Testimony of Jacob Schybinger.)

eat. I would say I was not there more than three or four minutes. After that I went on deck and went back aft. The tow-line was not attached then. When I went out from the mess-hall and went back aft that little boat was coming alongside, the "C–55." It was probably an hour after that that the tow-line was attached. The "C–55" came on the port side. I went along the port side to look at it. I did not stay there. I went astern. There were lots of them there then. My fireman was there, Healy. And Dobson was there for a minute —he was right there, then, because he had to go on watch, 12 to 4 watch. [379] There were so many newcomers on there you could hardly think of their names. I could if I saw them. I cannot remember the name of any other member of the crew that was with me then. I saw the tow-line attached. I was then back aft. I was not helping; I was looking on. I did not stay there from that time until we got clear down past the Farallones, I was there until I went on watch at four o'clock. I don't know the position of the "Shawnee" and the "Quadra" at about four o'clock; I was not up at the wheel-house. The Farallones were about off the beam then. That was the North Farallones. I could not say how far we were away from the North Farallones. It was all of four or five miles, anyway, about four or five miles on the port beam. It was about two hours before we passed the North Farallones that I saw the sounding taken. Ensign Morse took that sounding. He was by the sound-

(Testimony of Jacob Schybinger.)

ing-machine. There were two seamen with him. I don't remember their names, I don't know. I would recognize them if I saw them. I recognize one of them in court now. He is right back of Ensign Austerman. He was not standing by, he was standing by the lead; out by the taffrail where the lead goes over the side; he is a quartermaster, he was not one of the men who stood by the sounding-machine. I refer to Rothe. The seamen that I saw standing by the machine are not here. I saw Rothe, the quartermaster, Ensign Morse, and the two seamen. There were lots standing around there, looking around. I saw Rothe put the lead in the glass tube and attach it and drop it over the side. I watched him do that. I was leaning against the taffrail, a short distance from him, four or five feet. When the line came to him there astern he dropped it over the side. He attached the glass tube to the lead and put the line to it and dropped it over the side. I am not a seaman. I don't *know a* sounding machine works, although I know when a sounding is taken. [380] I saw the line dropped, put over the rail. The rail is about four or five feet high. When he dropped it over the rail the line was paid out as the lead pulled it down. After it had apparently at last reached bottom it was pulled up again; of course I don't know that it reached bottom; I wasn't down there to see it. It was pulled up by hand. Two seamen pulled it up. They were standing by the sounding machine. They were winding up the

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(Testimony of Jacob Schybinger.)

sounding machine and pulling the lead up that way. Rothe received the lead. I guess he detached the glass tube. There were a few more standing around there. I don't know if anyone was helping him, there were a couple of seamen standing around there. He took the glass tube off and took it up to the chart-house and had it sealed, I guess. He took it directly up to the wheel-house. I was not up there. From where I was I couldn't see if he gave it to anybody up there. The last I saw of him he was taking it up to the wheel-house, taking it away. That is the last I seen of it. I did not see them taking any more soundings coming in. I don't know that they took another one shortly after that. That is the only one I seen taken. If there was another one taken I didn't see it. The "Quadra" was in motion when I saw her. She was headed north; I don't know about due north, I know she was headed that way. As near as I could tell her nose was pointed north. She was just getting straightened out. That is the way I looked at it. What I mean by getting straightened out is getting into the sea, or into the tide; she was just under way for a short time, maybe a few minutes, just to get straightened out; that is all I noticed. When I noticed her she was making a turn and she stopped, a turn toward the north. She was turning from the east, coming around east. Her nose was pointing east, and I saw her turning from the east; she headed north and stopped. When I [381] saw her nose pointing

(Testimony of Jacob Schybinger.)

east we were coming right around her, right around her stern when I seen her. She turned from the east to the north and stopped. And she did that when we were right astern, when we went right around astern of her. The "Shawnee" was in motion; the "Shawnee" was moving twice as fast as the "Quadra," three times. We were going full speed there when we were astern of her. We were going full speed and stopped the engines, and right full speed again. I mean she stopped the engines and then started them again, full speed again. We swung around astern of her full speed and went right by her. I have been in court here once this week. First Officer Harris was on the stand then, I think. That is the only time I have been here this week. I was here a couple of times last week. Captain Howell was on the stand then; also Mr. Morse; also Rothe, the quartermaster; also a few more, but their names I do not know.

On redirect examination, the witness testified as follows:

Mr. GREEN.—Q. Who did you first talk to about this matter?

A. To a first lieutenant in the navy.

Q. What was the occasion when you talked to him about it?

Mr. GILLIS.—I think that is immaterial and not proper redirect examination.

The COURT.—There was nothing asked him on cross-examination with regard to how he happened to be here.

(Testimony of Jacob Schybinger.)

Mr. GREEN.—I will withdraw it, your Honor. That is all. [382]

TESTIMONY OF H. W. KLEIN, FOR DEFENDANTS.

H. W. KLEIN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at the Union League Club, San Francisco. I am assistant general freight agent for the Southern Pacific Company, headquarters at San Francisco. I am acquainted with Vincent Quartararo, a defendant in this case. I am a visitor at his home. I know his wife, his whole family. I know Mr. A. A. Bertrand, who is the brother-in-law of Mr. Quartararo. I remember the 3d of September, 1924, with relation to that acquaintance. On the 3d of September, 1924, I attended Mr. Bertrand's wedding at the Cliff House in San Francisco. There were present Mr. Bertrand, his bride, myself and my wife, Vincent Quartararo, this defendant. I was there from approximately eight o'clock until shortly after midnight. I know for a fact absolutely that Mr. Quartararo was there all of that time. I saw Mr. Quartararo on the 4th day of September, the following day. The bride at that wedding was Miss Augustine Trapani, Mr. Quartararo's sister-in-law. I was at Mr. Quartararo's home on the 4th of September. Myself and wife were there, Mr. Vincent Quartararo and his wife, the two Bertrand boys, Miss Bertrand and

(Testimony of H. W. Klein.)

Miss Michelini Trepani, and Mr. Quartararo's children. Miss Michelini Trapani is a sister of the bride I just mentioned. All of these persons were there on that date. Myself and wife usually spent Sunday evenings at Mr. Quartararo's home; also quite frequently on Wednesday evenings. On those evenings Mr. Quartararo would be present, except when he would be out of the city. [383]

TESTIMONY OF ED. KUPFER, FOR DEFENDANTS.

ED. KUPFER, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 1700 Jones street, San Francisco. I am a pork packer. My place of business is 1331 Pacific street. I know Vincent Quartararo, the defendant. I remember seeing him on Friday, August 29th, at the Elks Club. Gus Bertrand was there at that time. Mr. Stewart might have been there. I saw him on that day between 12 and 1 o'clock. I cannot say that I saw him there in the evening. I remember that I had a conversation with him on that occasion. It was regarding a dinner to be held at the Cliff House on the following night. On the following night I saw him at the Cliff House. That was the night of Saturday, August 30, 1924. In my party were Mr. Quartararo and his wife, Mr. and Mrs. Bertrand, Miss Trapani and myself. By "Mr. Quartararo," I mean Vincent Quartararo, one of the defendants

(Testimony of Ed. Kupfer.)

in this case. Mr. Roberts was the proprietor of the Cliff House. I received the bill that night and I told the head waiter to sign my name across the face of the bill and send it to Ruthjens & Co. I recognize this as the bill, with my name endorsed across it.

Mr. COGHLAN.—I offer this in evidence, if your Honor please, to be appropriately marked for the defendant Quartararo.

(The paper was here marked Defendants' Exhibit "J."

On cross-examination, the witness testified as follows:

I have known Mr. Quartararo quite a while, I would say maybe twenty years. We were practically born and raised together in North Beach. We lived about four or five blocks apart. I have been quite friendly with him during that time, visited back and forth between the families. [384]

On redirect examination, the witness testified as follows:

Mr. COGHLAN.—There is one matter, your Honor, I overlooked, and I would like to ask the witness about it.

WITNESS.—(Continuing.) I visited Mr. Quartararo's house during August and September of 1924. I also, during August and September of 1924, saw him quite frequently at the Elks Club. That would be during the day time, and it would be during the meeting on Friday night. I went away

(Testimony of Ed. Kupfer.)

to Richardson's Springs for two weeks, on the 4th of September. In the meantime I knew they were going to Catalina on the excursion of the Elks.

TESTIMONY OF U. F. STEWART, FOR DEFENDANTS.

U. F. STEWART, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at the Elks Club. I am the financial secretary; we have a bond drive there, and I am handling that bond drive for our new building. I am acquainted with Vincent Quartararo, the defendant. I remember Friday, August 29th of last year. I saw Mr. Quartararo at lunch-time on August 29th. I do not remember seeing him at night-time. Present at that lunch on August 29th was Mr. Bertrand; I remember that he was there. Mr. Kupfer is always there for lunch. I remember Friday, September 12, 1924, and I saw Vincent Quartararo on that date. That was also at the club. I saw him at lunch-time, and I saw him at night, too. There were quite a few present then; Mr. Sheehan, Mr. Goldsmith, Mr. Mangin and Mr. Simons. The meetings of the Elks are on Friday night. Mr. Quartararo is quite regular in his attendance at the meetings on Friday nights. [385]

TESTIMONY OF R. GOLDSMITH, FOR DEFENDANTS.

R. GOLDSMITH, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 638 20th Avenue, San Fransico. I am in the insurance brokerage business. I am acquainted with Vincent Quartararo. I recall Sunday, August 31, 1924. On that day I was at Napa Soda Springs, at the Elks outing. I went up the day before, on Saturday, August 30th. On Sunday, August 31, 1924, I saw Vincent Quartararo at the Napa Soda Springs. He was with his wife. There were also Captain Lemmon, Captain Casey, Mr. Stewart, Mr. Simons. Mrs. Goldsmith, my wife, was along with me. We went up in an automobile. I went to the springs in my own automobile, but I came back in Mr. Quartararo's automobile. The reason far that was that some unknown person unlawfully took my automobile up at Napa Soda Springs, and so I returned with Mr. Quartararo. We did not arrive in San Francisco until after nine o'clock that evening. He drove me to my home, arriving there sometime after nine o'clock. It was on Monday, September 1, that we returned. I know that when I got up on Sunday morning, that Mr. Quartararo was there. He was there, to my knowledge, all day Monday, the 1st of September.

TESTIMONY OF MRS. RUTH GOLDSMITH, FOR DEFENDANTS.

Mrs. RUTH GOLDSMITH, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I was at Napa Soda Springs on Sunday, August 31, 1924. My husband and myself went there on Saturday evening, August 30. The next day, Sunday, August 31, I was at Napa Soda Springs. I don't remember seeing Vincent Quartararo until Monday, there were so many there. I did see him on Monday, September 1. My husband and I went to the springs in our automobile, and we [386] lost it there, and came back to San Francisco with Mr. Quartararo and his wife in his automobille. It was after nine o'clock Monday night that we arrived home.

TESTIMONY OF J. J. FLATLEY, FOR DEFENDANTS.

J. J. FLATLEY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 1020 Union street. I am a merchandise broker. I am acquainted with Vincent Quartararo. I remember seeing him on Sunday, August 31, 1924, at Jackson Napa Soda Springs, attending the annual Elks auto outing. I was the chairman of the committee that organized that outing. I saw him there from around the noon hour, as I remem-

(Testimony of J. J. Flatley.)

ber it, up until Monday afternoon, from the noon hour until Monday afternoon about three or four o'clock. I saw him leaving with the Goldsmiths.

TESTIMONY OF JOHN J. CONNOLLY, FOR DEFENDANTS.

JOHN J. CONNOLLY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I know Vincent Quartararo. I remember seeing the defendant Quartararo on Friday, September 5, 1924, at the Elks Club. There were also present Mr. Goldsmith, Mr. Dowden, Mr. Pratt, Mr. O'Hare, and Mr. Marks. I remember the occasion very distinctly, we were playing cards that evening. I am a newspaper reporter.

TESTIMONY OF MRS. ALICE CONNOLLY, FOR DEFENDANTS.

Mrs. ALICE CONNOLLY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the wife of Mr. Connolly, who just left the witness stand. I remember a Thursday evening, the 11th day of September. I visited the home of Mr. Vincent Quartararo on that day. My [387] husband was with me. Mr. Vincent Quartararo was there during the evening. We were there between seven thirty P. M. and eleven thirty or twelve.

TESTIMONY OF RICHARD ROBERTS, FOR DEFENDANTS.

RICHARD ROBERTS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the proprietor of the Cliff House, in San Francisco. I remember Saturday, August 30, 1924, seeing Mr. Quartararo with his wife and others at the Cliff House. I believe that was the Kupfer's party, he was in that party. The date on this card is August 30. Also the name of Mr. Kupfer endorsed on the face of the card, and my head waiter's name. So that I am certain it was August 30. There was a family party there, there were the wives. I know Gus Bertrand—A. A. Bertrand. I am acquainted with the wife of Mr. Quartarao. She was present. I don't remembr exactly what time the party came there, but I should judge about between seven-thirty and eight o'clock. I don't remember how late in the evening they remained. I remember the 3d of September, 1924. There was a wedding party at the Cliff House that night. It was Mr. Bertrand's wedding party. The young lady who is now his wife was also there. There was the whole family there, and, of course, Vincent Quartararo and his wife. There were very many there, there were probably thirty or forty people in the party. I remember that A. Guppanelli was there. I remember Saturday evening, September 6, 1924, the Saturday after the

(Testimony of Richard Roberts.)

wedding. Vincent Quartararo and his wife were at the Cliff House that night. I sat with them for about an hour. I could not tell exactly what time that was, I should judge it was somewhere around nine to eleven o'clock, along in there. [388]

On cross-examination, the witness testified as follows:

I do not remember exactly seeing Mr. Quartararo there on other occasions; he was there quite often during that time, because I was arranging for that wedding party, it was during that period. The only evenings that I remember are those two that I testified to. I remember the party being there, I remember the occasion. I fix the date of the wedding because it was a unusually large party, and I can't forget it in a hurry. We naturally have a record of Mr. Kupfer's party on September 3d, and looking it up it is very easy to find the time, September 3d; and the next day I went to the State Fair, and I met Kupfer on the train. I looked up the date from our records and found that the records disclosed that Mr. Bertrand and party had been there at that particular time. There was a charge tag for that particular date; I never have looked for that, as a matter of fact, I might have it home and I might not, I don't know.

TESTIMONY OF ARTHUR MANGIN, FOR DEFENDANTS.

ARTHUR MANGIN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 410 Shrader Street. I am club manager at the Elks. I remember doing something for Mr. Vincent Quartararo on Tuesday, September 2, 1924, I gave him my Orpheum seats. I gave him two seats. They are my own seats, I have had them for four or five years. I have the same seats every Tuesday night. This was Tuesday, September 2d. I did not go to the Orpheum that night. I think Mr. Quartararo bought the tickets for Mr. Bertrand. I asked him why he wanted the tickets, and he said he wanted to use them, he wanted to take Mr. Bertrand and his future wife to the Orpheum. [389]

TESTIMONY OF A. A. BERTRAND, FOR DEFENDANTS.

A. A. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside at 2708 Fulton Street. I am acquainted with Vincent Quartararo. I remember going to the Orpheum on the 2d day of September, the night of Tuesday, the 2d day of September, 1924. I got the tickets to go there from Mr. Quartararo, through Mr. Mangin. I took Miss Trapani there that

(Testimony of A. A. Bertrand.)

night. On Wednesday, the 3d, I was at the Cliff House. We got out there about eight o'clock, or 8:30, along there somewhere. We left the party about half past ten. During all of the time I was there Mr. Vincent Quartararo was there. I left San Francisco that evening and returned on September 13th. I have two sons, Ray and Joe Bertrand, by a former marriage. During my absence they went to dinner every night at Vincent Quartararo's house, except on one occasion. On Saturday, September 13th, the day we arrived back in San Francisco on the steamer, we had supper that night at Mr. Quartararo's home. All of the family were there, on my side and his side. Vincent Quartararo was there. We ate dinner about 6:30 and we spent the evening there. I saw Vincent Quartararo on the following night, that is to say, on Sunday, September 14th, at his home. It was after dinner; I went there after my dinner. I should judge it was about eight o'clock. He remained there during that evening. He was arranging for his trip to Catalina. On the night of the 2d of September, which was Tuesday night, the night we went to the Orpheum, Mr. Vincent Quartararo and his wife were there, and I was there with my intended. [390]

TESTIMONY OF MRS. A. BERTRAND, FOR DEFENDANTS.

Mrs. A. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

The COURT.—Mr. Coghlan, is her testimony to cover identically the same episode?

Mr. COGHLAN.—Yes, your Honor.

Mr. GILLIS.—I will stipulate that it will be the same as that of her husband.

The COURT.—I don't think you need cumulate evidence to that extent. It is stipulated that Mrs. Bertrand will testify the same as her husband, Gentlemen, and you may consider that she has so testified.

Mr. GILLIS.—That is what her testimony would be, Mr. Coghlan?

Mr. COGHLAN.—Yes, precisely the same.

TESTIMONY OF ANDREW F. BURKE, FOR DEFENDANTS.

ANDREW F. BURKE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am an attorney at law. I reside at 3020 Jackson Street, San Francisco. My law office is in the Hobart Building. I remember Tuesday, the 16th day of September, 1924. A party of approximately 250 left from San Francisco on the "Ruth Alexander" about midnight to attend the Cali-

(Testimony of Andrew F. Burke.)

fornia Elks State Association Convention at Catalina Island. I have a list of those that went. I was the chairman of the committee and the list that I have is the list made up by Mr. Lynch and myself prior to the sailing of the steamer, on which we listed the members, the stateroom assignments, and their bungalette assignments on the island. I find the name of Vincent Quartararo here. I know of my own knowledge that Vincent Quartararo [391] went on the 16th of September, on that Tuesday, with us on that outing. His wife was with him. Mr. and Mrs. Bertrand were also along. William Lynch was there. I don't remember Jesse Adams; there was a W. T. Adams. And Frank Crester, Mr. Adams, Mr. Crester, and Mr. Quartararo occupied the same stateroom going and returning. We left Catalina on Saturday afternoon and reached San Francisco on Monday morning, September 22, at eight o'clock. When we arrived here there was a parade. Some members joined in the parade, and others went directly home. I went directly home.

TESTIMONY OF THOMAS HARRIS, FOR DEFENDANTS.

THOMAS HARRIS, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I reside at 169 Jordan Avenue, San Francisco. I am an electrical engineer. I am acquainted with Vincent Quartararo, a defendant in this case. I

(Testimony of Thomas Harris.)

saw him on Wednesday, September 3, 1924, at the Cliff House, at the wedding party.

The COURT.—I think we have had enough on that subject, Mr. Coghlan. There does not seem to be any doubt left that Mr. Quartararo was at that wedding.

Mr. GILLIS.—I will stipulate that he was there.

Mr. COGHLAN.—I think the chief witness for the Government, so far as this defendant is concerned, testified specifically about that date.

The COURT.—Well, that is a matter for the jury. At least, it is perfectly clear now that there was a wedding there, and that Mr. Quartararo was at the wedding.

Mr. COGHLAN.—And will the District Attorney also stipulate that Mr. A. Taffeneli, whom we have here to testify, was there also? [392]

Mr. GILLIS.—Yes.

WITNESS. — (Continuing.) Mr. Quartararo was there that night during the time that I was there. I arrived there about ten minutes to seven and left at about twelve o'clock.

Mr. COGHLAN.—And will that be stipulated to also, Mr. Gillis, as to Mr. Taffeneli? We can prove it by him.

Mr. GILLIS.—Yes.

TESTIMONY OF H. B. BRITTAN, FOR DEFENDANTS.

H. B. BRITTAN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 1106 Bush Street, San Francisco. I am with the Pacific Steamship Company, as assistant general passenger agent. I am acquainted with Vincent Quartararo, the defendant. I cannot say positively that I saw him on the night of Tuesday, September 16, 1924, but I did see him the next day, on board the "Ruth Alexander." We were taking a delegation from San Francisco to the Elks convention at Catalina. We left at midnight on the 16th. The boat was ready for the reception of passengers at nine o'clock on the night of the 16th. There was an incident that occurred the next day, on the 17th, that makes me absolutely positive of seeing Mr. Quartararo on that day.

TESTIMONY OF THOMAS F. DELURY, FOR DEFENDANTS.

THOMAS F. DELURY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 612 Page Street, San Francisco. I am district manager, Pacific Telephone & Telegraph Co. I am acquainted with Vincent Quartararo. I saw Vincent Quartararo on the "Ruth Alex-

(Testimony of Thomas F. Delury.)

ander" on the 16th day of September, 1924, as we left San Francisco. We left at about midnight. I saw him earlier in the [393] evening; we went aboard about nine o'clock and I saw him on board. I saw him on board the next day, the 17th. I saw him at Catalina on the 18th, 19th and 20th. I saw Mr. Quartararo on board the boat as we left for home on Saturday, September 20th.

TESTIMONY OF FRANK CRESTA, FOR DEFENDANTS.

FRANK CRESTA, a witness called on behalf of defendants, being first duly sworn, testified as follows:

The COURT.—Is this witness merely going to testify as to the Catalina trip?

Mr. COGHLAN.—Yes.

Mr. GILLIS.—I will stipulate as to that.

The COURT.—You have had plenty on that, Mr. Coghlan, I think.

Mr. GILLIS.—He left on the 16th and arrived back on the 22d.

Mr. COGHLAN.—There are many that will testify to that. Of course, these dates running from September 15 are of exceeding importance to me.

Mr. GILLIS.—I am willing to stipulate that he went down to Catalina.

The COURT.—The district attorney has stipulated that Mr. Quartararo went aboard that boat

Testimony of Miss M. Trapani.)

and went to Catalina and returned when this delegation returned.

Mr. GILLIS.—Yes.

Mr. COGHLAN.—That is all. [394]

TESTIMONY OF MISS M. TRAPANI, FOR DEFENDANTS.

Miss M. TRAPANI, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I am a sister-in-law of Vincent Quartararo. I remember Monday, September 22d, 1924. That was the day Mr. Quartararo returned with his wife from Catalina. They came to my house for dinner. My mother prepared a dinner for a family reunion on the return from that trip to Catalina. The Bertrand family was there.

TESTIMONY OF FRANK SAMUELS, FOR DEFENDANTS.

FRANK SAMUELS, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am in the real estate business. I live at 635 26th Avenue. I am acquainted with Vincent Quartararo, the defendant. I saw Mr. Quartararo on September 5 at the Elks Club. Also present at that time were Mr. George Marks, Mr. Ralph Sheehan, and Mr. John Connolly. I remember the 6th day of September, 1924. I saw Mr. Vincent Quartararo at the Cliff House that evening. He

(Testimony of Salvatore Quartararo.)

was there when I got there. I got there at about a quarter after nine.

TESTIMONY OF SALVATORE QUARTARARO, FOR DEFENDANTS.

SALVATORE QUARTARARO, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 880 Delano Avenue, San Francisco. Vincent Quartararo, the defendant, is my son. I am in business with my son, in the oyster cocktail business. I am with my son at the Bohemian Cocktail Co., 445 Minna Street. The name of the business is the Bohemian Cocktail Supply Co. We just produce oyster cocktails there, syrups. We are going out of business now. The business has to do with oyster cocktails, [395] syrups; it has never had anything to do with any character of beverages. The business is now being liquidated, sold and liquidated. I was there in the month of September, 1924. I remember when my son went to Catalina. I was at the place of business and in charge of the Bohemian Cocktail & Supply Co. during that period of time between the 16th of September and inclusive of the 16th, to the 22d of September, and inclusive of that date. My son left me there. I did not see Marina Crivello at that place of business on the 16th of September, or the 17th, or the 18th, 19th, 20th, 21st, or 22d. At that time I did not know anybody who was called "C. H." The first time I heard

(Testimony of Salvatore Quartararo.)

the name Belanger was when I came up to court here on Monday. Then I recognized this Mr. Belanger, because Mr. Crivello pointed him out and Mr. Belanger stood up. That was the first time I have ever seen him.

Mr. COGHLAN.—Q. Then I will ask you the direct question, did you have a conversation with this man who stood up, Belanger, when he was present, and when Marina Crivello was present, at the office of the Bohemian Cocktail & Supply Co., or anywhere else, between the 16th and 22d of September, in which you said to Mr. Belanger, or "C. H.," or whatever you may call him, "This is the man my son telephoned to," or words to that effect, or "This is the man that my son wants you to meet"? A. No.

Q. Did you have any conversation with Crivello at all, or in his presence, during the time that your son was absent at Catalina Island? A. No.

Q. You did not see any man by the name of Belanger during that period of time, or "C. H.," the person who stood up in court here the other day and whom you recognized?

A. No, I never did.

WITNESS.—(Continuing.) I did not hear my son, on any day [396] in September, telephone to Marina Crivello. My son did not leave any message with me to deliver to a man named "C. H.," or Belanger, during the month of September, 1924, or at any other time. I have known Marina Crivello for some time. I was with the Market

(Testimony of Salvatore Quartararo.)

Commission for five years, and my duty was to go to the fish wharf every month (morning?) and find out the fish they got, and set the price, and all of those things, and so I saw this fellow quite a little time down there, this Crivello. My son was working on the Food Commission of the State of California, and at that time was working in conjunction with the Government during the war. He was working with the State. I last saw Marina Crivello about a month and a half ago, in the store of the Bohemian Cocktail & Supply Co., at 445 Minna Street. I saw him talking with my son, and they argued and argued, and I was in the back, and I didn't hear really what they said, but when they finished talking I seen Crivello go away kind of black in the face, kind of angry.

On cross-examination, the witness testified as follows:

My son owned the business entirely. I just worked for my son. There was an old man over there working with me. After my son came back from Catalina he worked in there sometimes, sometimes come in and sometimes go out, and sometimes come in again. He attended to the books, and sometimes he helped along, too, to put up these oyster cocktails. He would be there sometimes a couple of hours, a few hours, four hours, go out and come back; sometimes he stayed half a day there; that would be pretty near every day, sometimes in the morning, and sometimes in the afternoon. I never knew Mr. Belanger at all, had never

(Testimony of Salvatore Quartararo.)

seen or heard of him before, and had never seen anybody there in the store that looked like him. I know Crivello very well, and [397] I know that he was not at the store when my son was at Catalina; he just come once in a while, you know. I did not see Crivello at all in the month of September. Maybe I saw him over there in October. Well, I couldn't tell if it was October, November or December, I don't know; he just come in once in a while. I don't think I saw him more than once after September. He might have been there two or three times in 1924. I couldn't tell exactly, because you know I don't take much interest whether he comes or not. I always work in the bank. It is in the back part of the store we make the cocktails and the syrup. There is a little front office. There is a partition there, but there is a door between. When my son came there he kept the books in the front part. I did not see Marina Crivello in August of last year. When Marina Crivello came there about a month and a half ago it just happened that my son was there then. I suppose it was in the morning, I don't remember. I think it was in the morning, about between ten and eleven. We have not made oyster cocktails for some time; we discontinued the business. We were not doing any business then, a month and a half ago. When I am working in back, as soon as somebody comes in it is my duty to go out and see who it is, and so I saw this Crivello come in. I saw my son talking to him. I was in back at-

(Testimony of Salvatore Quartararo.)

tending to my business. I think he stayed ten or fifteen minutes, or something like that. He went out the front way, out the front door, that is the only way to go out. I was in the back part, but at the same time, you know, I was looking around to see what those people say and what they don't say. I saw this Crivello talking to my son. He got kind of angry. He wanted something, I don't know. He looked awful mad. While they were talking I was standing there between the door; there is a door between the partition, and I was [398] standing there until he went out. I didn't hear what the conversation was, not really what he say. I was there in that business in May and June of 1924. My son was attending to the liquidation of this business. I don't know if my son had some other business. For about three or four years he was head deputy with the State Fish Exchange. Prior to that he had a store, fish and poultry, at the Emporium.

Mr. GILLIS.—Q. In the summer of last year did your son own a truck?

Mr. COGHLAN.—That is not proper cross-examination.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. There was a truck there, and it is there yet. That is what they used to deliver the cocktails with when we made the cocktails.

WITNESS.—(Continuing.) It was a regular truck; I cannot describe what kind of a truck it

(Testimony of Salvatore Quartararo.)

was. I do not know the name of it; I do not know where he bought it. I don't remember when he bought it, but it was before we were in business there. I don't know how big it is, or how heavy a load you can put on it. Maybe it is two tons, or a ton and a half, I don't know. He did not own any other truck than that. I don't know whether he paid for that truck in full in May or June of last year.

TESTIMONY OF A. E. DRENDELL, FOR DEFENDANTS.

A. E. DRENDELL, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 752 24th Avenue. I am in the electrical contracting business. I know Vincent Quartararo, a defendant in this case. On Tuesday, September 30, 1924, I was at the Wheeler Island Duck Club, of which I am secretary. There were present [399] the entire membership of the club, among them Mr. Bud Richmond, Mr. Simons, Dr. Veatch, Vincent Quartararo. We arrived there at approximately 5:30 in the afternoon. It takes about two and one-half hours to go up there. We returned to San Francisco at 8:30 o'clock in the morning on October 2d. The reason for our staying over after the first day of the duck season was that the "Countess," the launch which we hired from the Sacramento Short Line, failed to return for the second trip and pick up the balance of our mem-

(Testimony of A. E. Drendell.)

bership, some of them having left, and we had no means of getting away from that island except in an old tub, as we call it, that happened to be moored there, but which could not pull out until high tide, 4:30 the next morning, and so, to our inconvenience, we waited until 4:30 the next morning before we started over to Bay Point, and we landed in San Francisco at about 8:30 the next morning.

Mr. COGHLAN.—Will it be conceded that the same testimony would come from Bud Richmond, William Simons, and Dr. Veatch?

Mr. GILLIS.—Certainly.

Mr. COGHLAN.—And William Banta?

Mr. GILLIS.—Yes.

TESTIMONY OF MRS. J. S. BERTRAND, FOR DEFENDANTS.

MRS. J. S. BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 23 White Street. My husband is J. S. Bertrand. He is connected with the Levy & Ventner Co. I remember Thursday, October 2d, because that was a birthday. I saw Vincent Quartararo on Thursday, October 2d, at my brother-in-law's home on Fulton Street. My brother-in-law is Mr. A. A. Bertrand. There was a dinner party there, and we were there from six [400] o'clock until about ten or ten thirty, it might have been later, I cannot remember exactly.

TESTIMONY OF ARTHUR MANGIN, FOR DEFENDANTS (RECALLED).

ARTHUR MANGIN, a witness recalled on behalf of defendants, testified as follows:

I remember Tuesday, September 9, 1924. I remember going to the Orpheum that night. I went with my wife. Vincent Quartararo and his wife were there at the Orpheum that night. I saw them there about 8:30; I left just before the show was over, I left just about at the last act, and they were still there.

TESTIMONY OF RAY BERTRAND, FOR DEFENDANTS.

RAY BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I live at 2708 Fulton Street. I am a son of Mr. A. A. Bertrand, who testified here. I am acquainted with Vincent Quartararo. I remember when my father left upon his honeymoon on September 3. From September 3 to and inclusive of the 13th of September, we had dinner at Mr. Quartararo's house. Mr. Quartararo has two children, about eight and ten years old, I think. On the evening of September 4 we all went to bed early, it was just the night after the wedding, and everybody was tired. Mr. Quartararo went to bed also, that is, as far as I know, he started to his room and intended to go to bed. On Sunday, September 7,

(Testimony of Ray Bertrand.)

1924, we all went to Portola Valley, that is, Mr. Quartararo and his family, Miss Trapani, myself, my brother and sister. We all came home together the same evening. [401]

TESTIMONY OF JOSEPH BERTRAND, FOR DEFENDANTS.

JOSEPH BERTRAND, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am a brother of the last witness. I heard his testimony. My testimony would be substantially the same.

Mr. COGHLAN.—Is it conceded that he would testify the same, Mr. Gillis?

Mr. GILLIS.—Oh, yes, he would give the same testimony.

Mr. COGHLAN.—I think that is all I have to offer.

The COURT.—Have any other counsel any other witnesses?

Mr. GREEN.—No, your Honor.

The COURT.—Any rebuttal, Mr. Gillis?

Mr. RIORDAN.—At this time, if your Honor please, I would like to announce to the Court that we have come into possession of some three telegrams, between yesterday and to-day, that we think are material to our case, and I ask leave at this time to present that evidence. I had just become aware of that.

(Testimony of S. G. Kitchen.)

Mr. GREEN.—I don't know what the evidence is, but I object to the reopening of the Government's case in chief.

The COURT.—It is always permitted, Mr. Green. If there is anything new in the telegrams you will be given the opportunity to meet it.

Mr. COGHLAN.—May we have an opportunity to inspect the proffered evidence?

Mr. RIORDAN.—At the proper time you will have full opportunity.

Mr. COGHLAN.—We will have time to rebut it?

The COURT.—Absolutely. If the telegrams present any new matter, any defendant involved may have such time as is necessary to meet it. [402]

TESTIMONY OF S. G. KITCHEN, FOR THE UNITED STATES.

S. G. KITCHEN, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am manager of the Postal Telegraph Company in San Francisco. I identify the telegrams handed me as coming from our files. These are the original telegrams filed with us. They were presumably written by the sender, they were the telegrams filed with us.

TESTIMONY OF A. E. LITTLER, FOR THE UNITED STATES.

A. E. LITLER, a witness called on behalf of the United States, being first duly sworn, testified as follows:

I am city superintendent of the Western Union Telegraph Company. The telegram now shown me, dated May 27, 1924, was taken from our files. That is the original telegram brought in by the sender.

Mr. GREEN.—On behalf of the defendant Belanger, it will be stipulated that these telegrams are in his handwriting.

Mr. RIORDAN.—I offer them in evidence.

Mr. FAULKNER.—Our only objection to the telegrams—we are not making any technical objection—is that they are immaterial and irrelevant and incompetent, there is no transaction that they relate to shown.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—These telegrams read as follows:

On the blank of the Postal Telegraph Cable Co.:

"May 28, 1924.

"To Mrs. C. H. Belanger,
1108 N. Heliotrope Drive,
Los Angeles, Cal.

"Norgan wired money was wired First National

(Testimony of A. E. Littler.)

Bank L. A. Twenty-third. [403] Investigate at Bank. Francis leaving on Lark to-night. Love.

C. H."

A telegram to the same party, Western Union Telegram, dated May 27, 1924:

"To Mrs. C. H. Belanger,

1108 N. Heliotrope Drive,

Los Angeles, Cal.

"Have wired Vancouver regarding Williams money. Should hear in the morning. Passed couple hour with Berry to-night. Condition poor and quite here. Writing tonight. Hope you are well & happy. Love & regards to Teviotdale.

C. H."

And the last a Postal Telegraph telegram, dated May 28, 1924:

"Mr. George Norgan,

1050 Hamilton St.,

Vancouver, B. C., Canada.

"Just had telephone from Los Angeles saying that First National Bank has not yet received the money. Kindly investigate from your end. Wire me early because Williams is waiting.

"C. H. BELANGER."

TESTIMONY OF W. S. MORSE, FOR THE UNITED STATES (RECALLED IN REBUTTAL).

W. S. MORSE, a witness recalled on behalf of the United States in rebuttal, testified as follows:

On October 12, 1924, from the time the tow of the

(Testimony of W. S. Morse.)

"Quadra" started until four o'clock I was on the bridge on the "Shawnee." There was no sounding taken from the "Shawnee" between the time the tow started and four o'clock.

Mr. GREEN.—Just a moment. That is objected to, if the Court please, on the ground that it is not rebuttal. There has been an issue made on the question of this sounding, and this witness has already testified to what he did in connection with the sounding, and that has been denied by a witness [404] for the defense.

The COURT.—There was a witness here, Mr. Green, who testified that a sounding was taken while the ship was under way. Was that at two o'clock.

Mr. GILLIS.—Yes, your Honor, at two o'clock. That is the evidence.

The COURT.—I will overrule the objection.

Mr. GREEN.—Exception.

TESTIMONY OF R. N. WILLIAMS, FOR THE UNITED STATES (IN REBUTTAL).

R. N. WILLIAMS, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I have the rank of ward machinist, coast guard service. Between four o'clock and eight o'clock in the morning on October 12, 1924, I was in the engine-room of the "Shawnee." I was standing by the throttle. I was engineer in charge. I iden-

(Testimony of R. N. Williams.)

tify this book shown me as the machinery log, U. S. Coast Cutter "Shawnee," for October 12, 1924.

Mr. GILLIS.—I ask that that part of the machinery log of the "Shawnee" for October 12, headed, "Midnight to 8 A. M.," signed by R. N. Williams, Machinist, be introduced in evidence; I ask to read it into evidence, in order that the record may not be encumbered with the whole book.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and an effort on the part of the prosecution to impeach the testimony of a witness on a matter collateral to the issue concerning which he was cross-examined. Your Honor will have in mind that the sailor from the "Shawnee" testified to the taking of a sounding in the afternoon. Matters developed on cross-examination concerning from midnight of the [405] preceding day to 8 A. M. are collateral matters, and the impeachment of that witness concerning them would be immaterial, irrelevant and incompetent, not proper impeachment, and an effort to impeach a man on a collateral matter.

Mr. GILLIS.—The movements of the "Shawnee" from the moment she left Drake's Bay until the "Quadra" was seized is all part of the case.

Mr. FAULKNER.—That was not a part of the evidence of the man you are attempting to impeach.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—From the machinery log of the

(Testimony of R. N. Williams.)

U. S. Coast Guard Cutter "Shawnee," October 12, 1924:

"Midnight to 8 A. M. at anchor. Lighted fires in No. 2 boiler at 4:30.

"5. Cut in No. 2 boiler. Warming main engine.

"5:30 Turned main engine by steam.

"5:55 Reported ready.

"6:00 Working two bells getting under way.

"6:05 Standard speed at 70 R. P. M. ordered. Two boilers steaming forced draft. 52–20 burner tips in use.

"6:45 Cut out No. 2 boiler. Reciprocating dynamo in use for lights and refrigeration. All machinery working well.

"7:35 Stop.

"7:53. Standard speed, calm and smooth. R. N. Williams, Mach."

WITNESS.—(Continuing.) I know Mr. Schybinger. He was a member of the crew of the "Shawnee" on October 12. He was not on the watch from four to eight as a water-tender. I remember that Mr. Dobson was. He is not in the service now.

On cross-examination, the witness testified as follows: [406]

I do not know for sure what watch Schybinger was on. He was not on my watch. I went on watch again at four o'clock in the afternoon. Dobson was with me; he went on duty at four o'clock in the afternoon. He was on from four to eight with me. Schybinger was on the twelve to four

(Testimony of R. N. Williams.)

watch, as far as I know. I have no record of that in the log, as to who was on watch. This is the original log. Schybinger was a first-class water-tender, and that gave him charge of the fireroom. The water-tender, when we are under way, has charge of the fireroom. There was no rough log kept by Schybinger in his own handwriting. I went on watch at five o'clock that morning to warm the main engine. I had nothing to do with the lighting fires in No. 2 boiler at 4:30 A. M. The water-tender always lights up. All this information in this log is reported to me during my watch. The water-tenders keep a fireroom log when we are in port. While we are at sea no rough log is kept by the water-tender in the fireroom. There is no such thing as a fireroom log while we are at sea. I have no record at all as to what men were on watch on this day. I am just relying upon my memory that Schybinger was not on my watch. Schybinger was on the boat at that time. I saw him on deck in the morning. He was on the ship the whole trip. I saw him on deck after eight o'clock, after we had breakfast. I saw him between 8 and 12 that morning walking around the deck. I did not see him in the afternoon. I saw Dobson at four o'clock, when we went on watch. I did not see him before that. Between twelve and four in the afternoon I was in my quarters. I was sleeping part of the afternoon because I had to get up early in the morning, four o'clock. I had to go on watch at four o'clock that afternoon, too. All of this time that I was sleeping, the "Quadra" was under

(Testimony of R. N. Williams.)

seizure by the "Shawnee." [407] I never saw another so-called rum runner seized by the "Shawnee." I have been on the "Shawnee" two and one-half years. I saw the seizure of the "Quadra" made. I was on the bridge at the time. I went to sleep about half-past two. I did not see Schybinger on deck at two o'clock. Part of the time I was out at the stern of the boat. I had my lunch at twelve o'clock and between 12 and 2 I went aft and walked around and then went down and went to sleep. I went to sleep at about a quarter to two.

TESTIMONY OF E. T. PETERSON, FOR THE UNITED STATES (IN REBUTTAL).

E. T. PETERSON, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am with the coast guard as engineer officer. On October 12, 1924, from the time the tow of the "Quadra" started until four o'clock I was on the bridge of the "Shawnee," and during that time I was watching particularly the tow-line, and to see that the engines were run at proper speed so that the tow would not part. My duty called for the regulation of the speed of the engines and the working of the engines, and the signals to the engine-room. I did not see any sounding taken from the "Shawnee" from the time the tow started until we got into San Francisco. I was in a position where I could have seen it if a sounding had been taken. It would not have been possible for

(Testimony of E. T. Peterson.)

any sounding to have been taken on that trip without my seeing it.

On cross-examination, the witness testified as follows:

I am still in the coast guard service, attached to the "Shawnee." I was on the port wing of the bridge. I was watching the tow-line, and the sounding-machine is in line with the tow-line. The sounding-machine is on the port side of the [408] "Shawnee." The tow-line was on the starboard side. You could not see the bight where the line was attached, but you could see over the stern and see the tow-line. I could see over the sounding-machine, and being on the port side, and not in line, you could see the starboard side, you cross the amidship line by looking aft from the port wing of the bridge. If the sounding-line went over the stern while another boat was in tow, the tow-line would be very apt to interfere with it, it would be very apt to trail aft. The tow-line is running over the stern free so that it can swing around. The bight is in the amidship line. It always is. There is a chock through which the rope goes. That is not in the center of the boat, it is about five feet on the starboard side. There is nothing interfering with the view at that height between the bridge and the sounding-machine, you can see over them. A sounding could not have been made and I not notice it. It is in my direct range of vision. I was keeping the hawser at all times in the water, one section of the hawser in the water. There was

(Testimony of E. T. Peterson.)

no time that it was out of the water; there was that one section in the water all the time. That is proper stowage.

TESTIMONY OF T. J. MORRIS, FOR THE UNITED STATES (IN REBUTTAL).

T. J. MORRIS, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am chief machinist's mate. I was on the "Shawnee" on October 12, 1924. I had the 12 to 4 watch and was on the 12 to 4 watch in the afternoon of October 12, 1924. I was engineer, in charge of the engine-room between 12 and 4 that afternoon.

Mr. GILLIS.—Q. Do you know who your watertender was? [409]

Mr. GREEN.—That is objected to on the ground that it is not proper rebuttal.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. I do; it was Schybinger.

Q. And he was there the whole watch, was he?

A. Yes, sir.

On cross-examination the witness testified as follows:

There were on that watch with me one oiler and one fireman. The name of the oiler was I. Hansen; the name of the fireman was A. D. Llewellyn. I am sure that Schybinger was in the engine-room at all times from 12 to 4 o'clock on that day. He was not in the engine-room at all, he was in the fire-

(Testimony of T. J. Morris.)

room. The fireroom and the engine-room are separate rooms, with a bulkhead between, and with a water-tight door between. The door was open for air. Occasionally I was in the fireroom; I can look in there from the engine-room. I was not looking in there at all times. I was not looking at Schybinger all the time I was on watch. I didn't have my eye on him all the time. It is my duty to know whether he leaves the fireroom. It is customary for men on watch in the fireroom to go up for air, but they have to leave notification when they go. The water-tender is not the one who keeps the steam up. The fireman is under him. It would be perfectly proper for the water-tender, who is in charge, to step up on deck for air, but he would have to notify someone before he leaves. He has to notify me. To my knowledge, I had no notification at all from the fireroom that day that anyone wanted to go on deck. I am positive of that. I am positive that Schybinger was not on deck at all times from 12 o'clock until 4 o'clock that afternoon. I am still attached to the "Shawnee." I have about two months more to serve. Captain Howell is my commanding officer. [410]

TESTIMONY OF A. D. LLEWELLYN, FOR THE UNITED STATES (IN REBUTTAL).

A. D. LLEWELLYN, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

On October 12, 1924, I was on the "Shawnee"

(Testimony of A. D. Llewellyn.)

as a fireman. My watch was 12 to 4 in the afternoon. I was on watch that day from 12 noon until 4 o'clock in the afternoon, as a fireman, down in the fireroom. Schybinger was the water-tender on that watch. He was there on duty during those hours on that day.

On cross-examination, the witness testified as follows:

I am still in the coast guard service, and still attached to the "Shawnee." My commanding officer is still Captain Howell. I have three months to serve.

TESTIMONY OF I. HANSEN, FOR THE UNITED STATES (IN REBUTTAL).

I. HANSEN, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

I am in the coast guard service, as engine man, second class. Between the hours of 12 noon and 4 o'clock in the afternoon of October 12, 1924, I was on duty, while the "Quadra" was in tow. My duty was in the engine-room. I was oiling. Schybinger was the water-tender between 12 o'clock noon and 4 o'clock in the afternoon on that day. I am absolutely sure of that.

On cross-examination the witness testified as follows:

I am still in the coast guard service. I have ten

(Testimony of I. Hansen.)

months to serve. I am still attached to the "Shawnee"; Captain Howell is my commanding officer. [411]

TESTIMONY OF G. STAHL, FOR THE UNITED STATES (IN REBUTTAL).

G. STAHL, a witness called on behalf of the United States in rebuttal, being first duly sworn, testified as follows:

My position with the coast guard is chief boatswain's mate. I was on duty on the "Shawnee" between 12 o'clock noon and 4 o'clock in the afternoon of October 12, 1924, when the "Quadra" was in tow. I was stationed on the quarter-deck, right aft on the quarter-deck; all the quarter-deck was mine, in my charge. My duty was to look out for the tow-rope, to see there was no man coming aft on top of the tow-line. That was in case the line slipped, so nobody would get tangled up in it. It is a dangerous place. I had an axe with me, so that in case of a collision, or somebody should run over the tow-line, I was to cut it. If anybody came there from our boat I would have chased them away. The reason that I would do that would be so that they would not get tangled up into the tow-line. I did not see Mr. Schybinger there that afternoon between those hours. There was no sounding taken off the "Shawnee" between those hours. In the middle of the watch that afternoon there was a new parcel, a chafing gear put in the tow-line.

(Testimony of G. Stahl.)

On cross-examination, the witness testified as follows:

It took three of us to put in that chafing gear, myself and two others. One was Stokes—he was chief boatswain's mate at that time, and the other was Pavis. I am still attached to the "Shawnee." I have a month and a half to serve. Captain Howell is still the commanding officer. The bitts where the rope was attached are approximately 15 feet back from the stern. That takes up all the quarter-deck. The quarter-deck is more than 15 feet long, the rest of the line was coiled up. The coil was a fore-and-aft coil. There were sailors that came around there that afternoon, but I chased away whoever came there. It [412] would be possible for anybody to walk there, but you would get tangled up in the line. It is considered a dangerous thing to do, to walk around the quarter-deck when you have a tow. It is possible for a person to leave the port side forward and walk back and around the deck-house on the other side as far as the skylight, but no further aft, without being in danger at all; people could congregate there without any danger, but I chased them away just the same. I chased away quite a bunch. I chased them on the sides. I kept the crew on the sides while that tow was going on. I was alone on the quarter-deck.

TESTIMONY OF H. ROTHE, FOR THE UNITED STATES (RECALLED IN REBUTTAL).

H. ROTHE, a witness recalled on behalf of the United States in rebuttal, testified as follows:

I was on the "Shawnee" between 12 and 4 o'clock in the afternoon of October 12th while the "Quadra" was in tow; I was on the bridge at different times; I was aft twice; I was all about the ship. During those hours I did not take or help to take any sounding from the "Shawnee."

On cross-examination, the witness testified as follows:

I never helped to take any, none at all. During any hours I didn't take any that day.

On redirect examination, the witness testified as follows:

I didn't take a sounding when the "Shawnee" was astern of the "Quadra."

TESTIMONY OF M. J. STOKES, FOR THE UNITED STATES (IN REBUTTAL).

M. J. STOKES, a witness called on behalf of the United States, in rebuttal, being first duly sworn, testified as follows:

My position with the coast guard is chief boatswain's mate. [413] I was on duty on October 12, 1924, when the "Quadra" was in tow, between the hours of 12 and 4. My duty called me anywhere

(Testimony of M. J. Stokes.)

on the boat that was necessary. I have charge of all the deck space, the boat, the tow-lines, and seeing that everything is secure. I do not remember that I saw Schybinger on deck at all between those hours. I assisted in putting a chafing gear on the tow-line at about the middle of that watch 12 to 4.

On cross-examination, the witness testified as follows:

I suppose the whole crew was up on deck at different times that afternoon. I did not notice any men from the engine-room or from the fireroom who were on duty come up on deck. I don't remember everyone who was on deck that afternoon. I don't know whether it is customary for men in the fireroom to step up on deck, I have nothing to do with the engine-room. I don't remember seeing Schybinger on deck that afternoon. If he had been there I might have seen him, but not that I know of. He probably could have been on deck without my seeing him. I am in charge of the deck 24 hours a day; I am in charge of the deck all the time. I could not say that I saw Dobson on deck after four o'clock. I could not be sure that I saw Hansen on deck that afternoon, I believe I was talking to Llewellyn on the port side in the evening, but not in the afternoon. I know I was talking to him after supper that night, I was talking with him on deck. I could not say that I saw Williams on deck that afternoon. I do not know that I saw Healy on deck that afternoon, I cannot remember.

(Testimony of M. J. Stokes.)

I probably saw Dolan on deck that afternoon, he is all around the ship. I may have seen him on deck that afternoon, but I don't remember. I don't remember seeing Rothe on deck that afternoon.

Mr. GILLIS.—That is all, your Honor. [414]

Mr. GREEN.—Is the Government resting now?

The COURT.—Yes. You may call your witnesses now.

TESTIMONY OF C. S. TOLLEY, FOR DEFENDANTS.

C. S. TOLLEY, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am a banker. I am connected with the First National Bank of Los Angeles as one of the assistant cashiers. I have been connected with that bank about 24 years. My particular duties in connection with my position concern telegraphing payments and O. K.-ing checks. I know Mr. C. H. Belanger, one of the defendants in this case. He is a customer at our bank. I have known him from the month of February, 1924, and subsequent thereto. I recognize this instrument shown me as being a receipt from Mr. Belanger dated February, 1924; it is an official receipt given in the regular course of business in the First National Bank. Referring to this receipt, I had occasion to discuss with Mr. Belanger a transfer of the money represented by that receipt. He came to me not knowing how to transfer money, and he desired to send this money

(Testimony of C. S. Tolley.)

to Farmington, New Mexico. The money was sent to the First National Bank of Farmington, New Mexico. I understood that Mr. Belanger and Mr. Williams were in oil operations in Farmington, New Mexico. He asked my advice concerning the transferring of money in connection with that proposition. That was the execution of the advice that I gave him in February. These six receipts which I am now shown I recognize as official receipts of our bank and I recognize the signatures to all of them. I cannot positively identify the dates of all of them, but I know that subsequent to February Mr. Belanger did come in and see me, and I advised him concerning the transfer of money from Los Angeles to H. L. Williams, at Farmington, New Mexico. [415]

Mr. FAULKNER.—I will offer these documents in evidence.

(The papers were here marked Defendants' Exhibit "K.")

WITNESS.—(Continuing.) Subsequent to February, 1924, I had occasion to meet Mr. H. L. Williams. He was a depositor in our bank. I met Mr. Williams I think previously to the time that he opened his account. It was sometime in March that he opened an account and established banking relations with us. He was introduced by Mr. Belanger. Mr. Belanger was his reference to the bank. Mr. Williams was introduced to us as an oil operator in connection with Mr. Belanger. In the month of May, 1924, and particularly around

(Testimony of C. S. Tolley.)

the 24th of May, we had occasion to advise Mr. Williams and Mr. Belanger concerning the transfer of some moneys coming from Canada. I recognize this check which is shown me, dated May 24. I recall in connection with the issuance of that check a conversation with Mr. Williams and Mr. Belanger concerning a sum of approximately $12,000. Mr. Belanger came to the bank and stated that there was some money coming to him, and informed me that there would be $12,000. He made out a check, as we have it here—a check that I made out and Mr. Belanger signed, on May 24, for the purpose of establishing an account for Mr. Williams, that is, depositing it to his credit. The account had been opened before. The sum of $11,769, some amount like that, came, and for that reason we destroyed this check, that is, Mr. Belanger destroyed it; in other words, the check was returned to Mr. Belanger. We received a draft in the sum of $11,793.60; the difference is represented by the cost of the exchange. I remember that there was a delay of about four or five days in the receipt of that check. There were inquiries made of me concerning this delay by Mrs. Belanger. When she was inquiring of me concerning the failure of the money to arrive on time, she showed me a [416] telegram. I recognize Government's Exhibit 59 as a telegram similar in form to the one Mrs. Belanger showed me. In the discussion on May 24th the name of the man from whom the money was coming was mentioned; it was Morgan, or

(Testimony of C. S. Tolley.)

Norgan, some name like that. That is my recollection. The money came to us in the form of a check or credit from the First National Bank of Hollywood, affiliated with the First National Bank of Los Angeles; it was received from the Bank of Italy of Los Angeles; my recollection is that they had received it from the San Francisco main office, but I don't know just what bank sent it to them. The account of Mr. H. L. Williams was credited with that sum.

Mr. FAULKNER.—I offer the torn check, which is in an envelope, in evidence; I also offer the draft in evidence, and ask that they be marked our exhibits, respectively, next in order.

(The documents were here marked, respectively, Defendants' Exhibits "L" and "M.")

WITNESS.—(Continuing.) I recognize this as a photostat copy of the deposit of that particular fund to Mr. Belanger's account and Mr. Williams' account; it first came to Mr. Belanger and then we had instructions to credit it to Mr. Williams' account.

Mr. FAULKNER.—I offer this in evidence.

(The document was here marked Defendants' Exhibit "N.")

WITNESS.—(Continuing.) I have had occasion to advise Mr. Belanger concerning financial matters during quite a period of time that he was a patron of our bank. From time to time we would speak of his oil operations in Farmington. Several letters of introduction were given to him by the

(Testimony of C. S. Tolley.)

bank; one was given him to a man by the name of Brown, vice-president of the [417] Union Oil Company. That letter was given him by one of our vice-presidents, an assistant cashier. It was a business letter. I know Mr. G. S. Green. He is also an assistant cashier in our bank. His desk is adjoining mine. I recognize this as a photostatic copy of an original letter which was given to Mr. Belanger, or on Mr. Belanger's behalf, in relation to an oil proposition.

Mr. FAULKNER.—I offer this letter in evidence.

(The letter was here marked Defendants' Exhibit "O.")

"August 21, 1924.

"Mr. Chester W. Brown,

"Vice-President Union Oil Company.

"Los Angeles.

"My dear Mr. Brown:

"This letter will introduce to you our good friend, Mr. C. H. Belanger, who is a responsible man, and in whose statements you may rely upon. He being an old depositor of this Bank, we have taken the liberty of referring him to you, thinking that Mr. Belanger and the Union Oil Company might both profit thereby.

"Hoping for the above mutual advantage, I beg to remain

"Yours very truly,

"(W. H.)

"G. S. GREEN,

"Assistant Cashier."

(Testimony of C. S. Tolley.)

WITNESS.—(Continuing.) At the time of this $12,000 transaction, I think the money was coming from Edmo n, or one of those places; I am not sure.

On cross-examination, the witness testified as follows:

I have known Mr. Belanger quite a few years. I first got acquainted with him in the First National Bank of Los Angeles. I first met Mrs. Belanger there. That was probably two or three years ago, I presume. I think I met Mr. Belanger six months to a [418] year later. He opened a bank account. From time to time deposits have come in to his account. I could not say positively that they were made with any degree of regularity; probably once or twice a month, or probably oftener than that. They were different amounts. This $11,000 was about the largest amount. It varied from that on down. I met Williams through Belanger; I didn't know him before. I didn't know whether he was an oil operator only through what Mr. Belanger told me; when an account is opened we ask their business, and later we receive the information from the bank reference that is given to us by the depositor. I did not personally check this reference, but the bank did. Someone is in charge of that. Our information card or reference card indicated that he was from Edmonton, Canada, and that he was [419] an oil operator. I did not open C. H. Belanger's account, so I am not sure what was given in the

(Testimony of C. S. Tolley.)

way of reference at that time; I did not open it personally, but I was introduced to him and possibly O.K'd his check. I presume the bank had a report regarding him. I have not looked it up. When this $11,000 transaction came up I did not look up Mr. Belanger's reference card, for the reason that Mr. Way, our former vice-president, a retired vice-president, and Mr. Green spoke very highly of him, and they had the early transaction with him before I did, and for that reason when Mr. Green and Mr. Way would be out I would wait on Mr. Belanger. I did not know what Mr. Belanger's holdings were principally in business concerns. I know nothing whatever about oils, so I would not advise him about oils. It was about the transfer of this money. We had no social acquaintance, nothing but business. If Mr. Belanger took occasion to tell me that he had large holdings in the Consolidated Exporters Co. of Canada I do not recall it. He did not tell me that this sum of $11,000 odd was coming from the Consolidated Exporters Co. of Vancouver, B. C.

TESTIMONY OF H. S. MACKAY, Jr., FOR DEFENDANTS.

H. S. MACKAY, Jr., a witness called on behalf of the defendants, being first duly sworn, testified as follows:

I am an attorney at law, practicing in Los Angeles. I am a member of the firm of Flint & Mackay. The members of that firm are Frank P.

(Testimony of H. S. Mackay, Jr.)

Flint, William R. Flint, William A. Bowen, Robert B. Jackson, Arthur R. Smiley, J. H. Shank, W. L. Nutten, Jr., Franklin W. Peck, and myself. We are the attorneys for the First National Bank of Los Angeles. In the month of May, 1924, Mr. Teviotdale was recommended to our firm by Mr. [420] Martin, the vice-president of the First National Bank, presenting a card of introduction addressed to Mr. Bowen, of our firm, which card I have here, and which is a part of our office records. Our office records show that Mr. Teviotdale called on the date that this card bears. Mr. Bowen's room adjoins my private office.

Mr. FAULKNER.—I offer the card in evidence and ask that it be marked Defendants' Exhibit "P."

(The card was here marked Defendants' Exhibit "P.")

WITNESS.—(Continuing.) Subsequent to May 28, 1924, our firm had occasion to advise certain people in connection with an oil proposition in what is known as the San Juan Basin. Mr. Teviotdale called at the office first and explained that a Mr. Williams, Mr. Belanger, Mr. Norgan, and Mr. Nard were becoming or had become interested in the acquisition of some oil holdings in the San Juan Basin, and they were seeking our advice as to the best method of handling the situation from a corporate standpoint. He also stated that Mr. Williams was interested with some people in Baltimore in connection with adjoining oil properties.

(Testimony of H. S. Mackay, Jr.)

Mr. Teviotdale came in first alone. Our office records show that he called several times, later with Mr. Williams, and then later—some time, as I recall it, during the month of June, Mr. Belanger came in. The matter was somewhat novel and as the amount of acreage they were attempting to obtain was so enormously large, we had to see on what basis it would be possible for them to handle it, and so Mr. Bowen and I discussed the matter. It was something in the neighborhood of between 150,000 and 200,000 acres of oil properties in New Mexico. A corporation was formed. Mr. Belanger, Mr. Teviotdale and Mr. Williams were interested. The purpose of that corporation was to acquire such of the [421] oil lands as they could. Our notes show that Norgan et al. were to put up $20,000 for Well No. 7, for a 50 per cent interest. Then it says in parenthesis, "Has already put up $12,000." I am reading these notes from our files. This note I cannot tell you exactly when it was made, but I know that it was in our file before September 1, 1924, because at that time Mr. Bowen went East for a month and he left the matter in my care and these papers were in the file at that time. I had occasion to see Mr. Belanger in our offices in the month of September, 1924. He came into the office on September 15. About a week after that Mr. Belanger came to see me just as I was leaving to go to attend an important conference I had at the bank. He told me that he was going away and would like very much to see me

(Testimony of H. S. Mackay, Jr.)

that day. I told him it would be impossible, because I was going to be engaged all the rest of the day, and that Mr. Bowen would soon return from Baltimore, and that I wished he would wait until Mr. Bowen came back, and so he said he would wait until after his return. He said he was going north.

Mr. FAULKNER.—Q. In the month of September did you receive from Mr. Belanger a summons and complaint in an action which you defended, and which was pending in the District Court of the State of New Mexico, in and for the county of San Juan?

Mr. RIORDAN.—Is this for the purpose of establishing this oil corporation?

Mr. FAULKNER.—The complaint shows that during the month of May, 1924, H. L. Williams and Belanger entered into an oral agreement concerning an oil proposition in San Juan.

Mr. RIORDAN.—I am willing to stipulate, if your Honor please, that these particular parties named here went into this law [422] office and there made arrangements and went through all the legal procedure about an oil corporation as testified to here.

On cross-examination, the witness testified as follows:

The first time I became acquainted with Mr. Belanger was in this oil incorporation matter. I never met Mr. Belanger before. I only met him in a business way during that time. I should say

(Testimony of H. S. Mackay, Jr.)

that I met him personally and had conversation with him from four to six times. He never discussed with me his interests in Canada. I understood—he didn't tell me—that he was a Canadian. I only saw Miller once. I do not know if he is the same Jack Miller who was convicted down there for a liquor conspiracy. I know there was a Miller down there who was convicted. This Miller's name was J. Miller. I prepared a document for them that day and I know that his name is J. Miller. I never saw Mr. Nard except that once. He was there at that same time. I don't know whether he has any business in Canada or in Scotland.

On redirect examination, the witness testified as follows:

My associate, Mr. Bowen, handled most of these transactions. He is in San Diego to-day on some litigation, settling a lawsuit. In this matter I think there was another suit brought by some assignees of some creditors of these oil operations in New Mexico against Mr. Belanger and others. We are also representing him in a condemnation suit, for the condemnation of alley adjoining a piece of property he owns in Los Angeles. I saw Mr. Belanger frequently when he was consulting with Mr. Bowen. [423]

TESTIMONY OF D. J. TEVIOTDALE, FOR THE DEFENDANTS.

D. J. TEVIOTDALE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I reside in Pasadena. I have lived there 18 months. Prior to that my residence was in Edmonton, Canada. I know C. H. Belanger. I knew him since I was a boy, a young boy. Since I have resided in Pasadena I have seen Mr. Belanger there frequently. I saw him on several days in the month of September. I saw him on the 21st of September. That was a Sunday. I saw him that day at my father's residence in Pasadena. I am a teacher in Pasadena. I have been a teacher for a matter of a few months there. Prior to that I was a teacher in Canada. Prior to that I was a soldier. I am absolutely definite in my statement that I saw Mr. Belanger on Sunday, the 21st of September. I fix that because it was the day following the return of my mother and father from Europe. They returned on Saturday, the 20th; that was the second Saturday after my younger brother left for school in Canada, and I know that he left about the 4th or 5th of September. I know that he left in the first week of September, because that was a few days after Labor Day, and on that occasion we were on a holiday together. My brother had reached Toronto and had been in Toronto a day or two when my father and mother arrived in Toronto on their way home. It takes

(Testimony of D. J. Teriotdale.)

about five days to go from Pasadena to Toronto—something less than a week. My brother arrived there the 10th or 11th of September and my father arrived there the following Sunday. He was in Toronto the following Sunday morning. Another fact which enables me to fix the date of their return is that before my father had been in Pasadena a week he returned to Canada. I saw Mr. Belanger at my father's house in Pasadena on Sunday, September 21. There [424] were present Mrs. Belanger and Mr. Belanger, Mr. and Mrs. Gilbert Wood, and my own immediate family, father, mother, and sister. My father brought a certain rather unique present to Mr. Belanger, which consisted of a Scotch hat and a pair of bagpipes. We had Mr. Belanger dressed up in those, sitting on the veranda, endeavoring to play the pipes. Mr. and Mrs. Belanger left our house that day to go over to the residence of Mr. and Mrs. Wood, to have dinner.

On cross-examination, the witness testified as follows:

I have known Mr. Belanger fifteen or sixteen years. It is an old family acquaintance. Mr. Belanger was a hotel proprietor in Canada. I don't know anything about his holdings in the Consolidated Exporters, Ltd. I am not related in any way to Mr. Belanger. I am relying on my own memory when I give the date as September 21. It is vividly impressed on my mind in this particular case.

TESTIMONY OF G. A. WOOD, FOR DEFENDANTS.

G. A. WOOD, a witness called on behalf of defendants, being first duly sworn, testified as follows:

My name is Gilbert A. Wood. I am associated with the H. A. Schiffmann Co., manufacturers of proprietary medicines, 1734 North Main Street, Los Angeles. I reside in Pasadena. I have lived there three years next October. I know Mr. C. H. Belanger. I have known him seven or eight years. I saw Mr. Belanger in Pasadena in the month of September. I saw him in Mr. Teviotdale's house and also in my own. I also saw him at our factory on the following day. I saw him in Mr. Teviotdale's house on the 21st of September. I have known Mr. Teviotdale about eighteen months. We visit back and forwards. I was over at Mr. Teviotdale's house one or two days before Mr. Teviotdale [425] arrived from Europe, and they told me that he was going to arrive on the 20th. On the following day my wife and myself went over to welcome him back from abroad, which was a Sunday. I recall the incident of the present to Mr. Belanger. I also received a present, a very nice cane. That same day Mr. and Mrs. Belanger came over to our house to dinner. There were present Mr. and Mrs. Belanger, my wife, my son, and myself. They remained until probably ten o'clock that evening. I saw Mr. Belanger the next day at our factory. Mr. F. C. Schiffmann was there, and the entire office

(Testimony of G. A. Wood.)

force of that business. That is quite an establishment. I know that Mr. Schiffmann was there, because Mr. and Mrs. Schiffman should have been at our house on Sunday for dinner, and we were talking about the reason why he could not be there, and also, I had the misfortune of twisting my ankle in the afternoon. I am absolutely positive that I saw Mr. Belanger on both those days.

On cross-examination the witness testified as follows:

Before residing in Pasadena I lived in St. Paul, Minnesota, and before that in Chicago. I have never resided out of the United States. I am recalling the 21st of September, because young Teviotdale said his father was expected on the 20th. There are certain circumstances that would make me recall it. I have not any memorandum to go on. I have talked about this matter with Mr. Belanger during the last couple of days. He came down South. It was Mr. Teviotdale that refreshed my memory. That is how I fix this matter principally, by that refreshment.

TESTIMONY OF R. V. WOOD, FOR DEFENDANTS.

R. V. WOOD, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am the son of Mr. Gilbert Wood, who has just left the [426] witness-stand. My business is surveying. I reside in Pasadena. I remember see-

(Testimony of R. V. Wood.)

ing Mr. Belanger at our house on Sunday the 21st of September. I fix the date from the fact that my folks asked them over to dinner that evening. My folks asked Mr. and Mrs. Belanger over to the house that evening. At different times I visited the Teviotdales, and inquired as to when Mr. and Mrs. Teviotdale would return from Europe, and they told me that they would return on Saturday, September 20th. This was the following day, the 21st. I fix it by that incident.

On cross-examination the witness testified as follows:

I have resided in Pasadena about three years. Before that I lived in St. Paul. The boy and girl, the daughter and son of Mr. and Mrs. Teviotdale, told me that their parents would arrive home on the 20th. I visited their home quite frequently. Within the last few days I have discussed this matter with my father, we just discussed it back and forth between ourselves. Mr. Belanger was not present when my father and I discussed the matter.

TESTIMONY OF FREDERICK C. SCHIFFMAN, FOR DEFENDANTS.

FREDERICK C. SCHIFFMAN, a witness called on behalf of defendants, being first duly sworn, testified as follows:

I am secretary and treasurer of the R. Schiffmann Co., which manufactures Asmador products. The R. Schiffmann mentioned is my father, Dr. Schiff-

(Testimony of Frederick C. Schiffman.)

mann, of Pasadena. Our business is an international business. I reside at 1800 Lincoln Avenue, Pasadena, California. I know Mr. Wood, and the Teviotdale family, and I know Mr. Belanger. I remember seeing Mr. Belanger on Monday, the 22d of September, 1924, at our factory. I fix that date by the fact that Mr. Wood had invited Mr. and Mrs. Belanger to dinner on Sunday, and Mrs. Schiffmann and [427] myself were both invited, but on account of the fact that I had to take my daughters—it was the opening of the collegiate school at Los Angeles, and my daughters had to leave, one that night and one the next day, for school, and we could not go to the dinner party on account of the fact that we had to pack them up and return them to this school at seven o'clock, under the rules, and so my wife asked to be allowed to decline the invitation on account of getting the girls off to school, and the fact that our servants had left. I am certain of that date. On the afternoon of Monday, the 22d, Mr. Belanger visited our office, and the relating of the present of the bagpipes—a small toy bagpipe, and I believe they call it a tamoshanter cap. Mr. Wood had told me about it, and told me the fun they had over it, and I asked him if they were trying to make a bonny Scot out of a Frenchman. That incident, and also, later on, the fact that Mr. Wood very severely injured his ankle, and we have to keep a record in our office, as we have state insurance—that record is there; I asked him to go to the state first aid office, but he

(Testimony of Frederick C. Schiffman.)

said it was not so bad as that. We have to keep that record.

On cross-examination, the witness testified as follows:

I didn't bring that record up here with me, but I can get it for you. I didn't think it would be required. That could not have been on Tuesday instead of on Monday, because I had a most harrowing automobile experience in Tuesday, when I took my other daughter to school, and I will never forget it. What happened to me on the Wednesday following that—well, I might ask you the question what happened to you on the 8th of June last, and you could not tell unless you could trace it by letters, or a check, or correspondence, or something like that. You can ask me questions for an hour, if you want to, and I [428] guess you will find that my mind is all right. I could probably trace myself on that Wednesday, through my correspondence.

TESTIMONY OF J. J. DOBSON, FOR DEFENDANTS.

J. J. DOBSON, a witness called on behalf of defendants, being first duly sworn, testified as follows:

On the 12th day of October, 1924, I was watertender, second class, U. S. Coast Guard, atached to the cutter "Shawnee." I was standing the 12 to 4 watch. I am certain about that. I stood the 12 to 4 watch in the morning, and also in the afternoon. I was relieved at the end of the 12 to 4

(Testimony of J. J. Dobson.)

watch that afternoon by water tender Schybinger, who testified here in this court. I am positive about that. I was here this morning, and I heard the testimony of the witnesses from the "Shawnee"; I am still positive that Schybinger relieved me at four o'clock. Wilheim was my fireman; I could not swear to the oiler, but I think it was Hansen. I came up from the fireroom that afternoon on that 12 to 4 watch. The "Quadra" was under tow at that time. I did not report to anyone before I came out of the fireroom. There is no custom to it, if you want to go up there you go up. We would not do that if we were getting bells, or working bells, or anything like that. We were not receiving bells at this particular time, the boat was proceeding on a steady course, as far as I know, the engines were turning over at the same rate of speed, there had been no changes. For at least half an hour there had been no bells or no changes at all. I stepped out on the deck just to get up in the air. There is nothing unusual in that. I left the fireman down there. I just told him I was going up for air for a few minutes. That was at two o'clock. There is a clock just inside the engine-room door, and I looked at it. My custom [429] with regard to stepping out on deck to take air during a watch below is that I generally step out and walk around the ship and go back in the other door. I generally do that when I am about half through the watch. I did not step up on deck on account of noticing the time at that time, but when I was going up I

(Testimony of J. J. Dobson.)

did notice that it was about two o'clock. I went out the starboard door of the engine-room and walked aft, and up by the quarter-deck and back on the port side. I walked between the towing bitts and the warrant officer's quarters. The warrant officer's quarters are next to the quarter-deck. In walking around there I knocked my hat off by bumping into the sounding wire. I looked at it. The sounding wire runs aft to the taffrail, in a pulley. I was not ordered off the quarter-deck at that time by anyone. I don't remember seeing the chief boatswain's mate stall there. He did not order me off the quarter deck, I was not ordered off. I walked around there without at all interfering with the towing rope. I saw Mr. Rothe there. He was connecting the lead in the end of the wire. I saw Schybinger back there. He was standing on the port side of the quarter-deck, along by the port rail, somewhere near the port rail. He was not interfering at all with the tow rope, he was on the opposite side. There were three or four other people there. I saw Ensign Morse at that time. He was on the boat deck, near the sounding machine. I walked forward on the port side and back in the boiler-room and down below to my post of duty. I came off watch at about five minutes to four, a few minutes to four, I won't say five. I have no written record of what watch I kept. No written record is kept of the watches that the men stand at sea. There is generally a piece of scrap paper hung up on the bulletin board in the engine-room

(Testimony of J. J. Dobson.)

assigning the watches. When I got off watch at four o'clock in the morning I slept until sometime [430] after ten. I was a little bit late for lunch, it was probably about 11:25, or something along about that time, that I had lunch. I went to the first mess. I saw Schybinger at the first mess. He was there when I got there, when I arrived. I could not say I remember when he left the mess hall. I left as soon as I got through, and I went down below and got ready to go on watch, changed my clothes and put on a jumper. I heard a shot fired. I was just then ready to leave the engine-room door to go forward to mess. When I heard the shot I looked forward to see what it was, and then I went forward in the engine-room. I was just coming outside then when I heard the shot, just at the engine-room door then.

On cross-examination, the witness testified as follows:

I have known Schybinger for quite a few years. He is not the first man I talked with on this case, I talked with a couple about it. I have not been with Schybinger for the last day or two; I was here in the courtroom with him this morning. I got up about 10:30, or some such matter, on Sunday, the day of the seizure. I washed in the petty-officer's washroom, and then went back to the engine-room; that means to the upper engine-room. At that time we had just left the "Principio." I was in the upper engine-room, reading. I stayed there all morning until the first

(Testimony of J. J. Dobson.)

mess was called. The boat was moving along at about standard speed. I don't know if they had sighted anything then, I paid no attention to it. I stayed in the engine-room, the upper engine-room, until between 11:15 and 11:30, when I came out. I came out on deck then and went forward to the mess-hall; I was in the alleyway to the mess-hall. I saw the "Quadra" then. We were just rounding her stern, we were a few boat lengths off. I went right on into the mess-hall; I just glanced at the "Quadra" as I went by. I was not particularly interested. I went in and had my lunch. Schybinger was already sitting [431] down. I didn't notice as to whether he was pretty well through his lunch. I saw Healy, the fireman, in there, and, of course, my fireman was there. That is all I recollect. There might have been some others in there. There was more than one table. The shot was fired just as I started in there. I had not got in there yet, it was fired before I went into the mess-hall. I did not see them fire the shot. I looked to see what they were firing at. I did not see it hit. We were probably by the "Quadra" at that time, probably a few boat lengths beyond the "Quadra." The "Quadra" was to our starboard. I probably remained at lunch about ten minutes. The fireman and I work in one room, it is a small room. My duties as water-tender are to see that there is water in the boilers, and to have the steam pressure up at all times. I take care of the fireroom. If anything would come with

(Testimony of J. J. Dobson.)

reference to a change in the steam, the engineer generally sings out to us what they are. With the fireman, I attend to them, whatever change is necessary. The fireman's duties consist of changing burners, changing tips in the burners, and keeping the fireroom clean. If I go upstairs for air I notify the fireman. It would be necessary to notify the fireman. We are not under orders to always notify the other man if one leaves to go up for air. I never heard of any order to that effect. I always do it. The fireman always notifies me. I have a very distinct recollection of going upstairs about two o'clock. I went up on the starboard side of the "Shawnee" and walked around to the port side; back through the starboard alley and across the forward part of the quarter-deck. That is what they call the main deck. The sounding machine is located on a deck above that. The wire that knocked off my hat did not hit my head, it just brushed my hat. I do not know that as a matter of fact that wire is [432] about nine feet above the floor; I don't know how high it is when it is tight. It was hanging slack. I noticed Mr. Morse and one or two others by the sounding machine, but I don't know who they were. I saw the quartermaster out aft handling the wire. His name is Rothe. I saw Schybinger on that round, too. He was standing on the port side of the quarter-deck, along the rail. I am positive about seeing Schybinger. I am not a member of the coast guard now. I left it on December 18, 1924. I got a dis-

(Testimony of J. J. Dobson.)

charge. I have not got it with me. It was dishonorable.

On redirect examination the witness testified as follows:

I was charged with neglect of duty, sleeping on watch. I went to sleep on watch while the vessel was tied up at pier 31, San Francisco. I am doing odd jobs now. The last was with the Williams & Marvin Shoe Co. I live at 937 Buchanan street, San Francisco.

On recross-examination, the witness testified as follows:

At the time I refer to, when the boat was tied up at Pier 31, San Francisco, there was steam in the boilers, and fire under them. I was the only one down there. The heat, I expect, put me to sleep; also quinine and whiskey.

The COURT.—Have you, Gentlemen, anything further?

Mr. GREEN.—Nothing further, your Honor.

The COURT.—Both sides rest?

Mr. GILLIS.—The Government rests.

Mr. FAULKNER.—At this time, if the Court please, on behalf of all the defendants, jointly and severally, I move for the suppression of all of the exhibits, made at the time of the close of the prosecution's case. If the Court will permit it, and if agreeable to Mr. Gillis, may the motion to suppress the evidence [433] in which I referred to all the exhibits, be considered as renewed and made at this time?

Mr. GILLIS.—Certainly, that is perfectly agreeable.

Mr. FAULKNER.—I would like to supplement that particular motion, if the Court please. I would ask the Court at this time, both sides having rested, to exclude from the record the evidence concerning the speed of the "C–55." At the time of the admission of that evidence in the record the Court will recall a legal objection was made to its introduction. I do not desire, unless the Court desires me to, to indicate the legal proposition that was involved in that objection, which was ruled on at that time—

The COURT.—It is considered as made upon the same ground, Mr. Faulkner.

Mr. FAULKNER.—Yes, your Honor.

In addition to that, if the Court please, I desire again, on behalf of each and every defendant, jointly and severally, and the motion may be, I take it, considered to be made on behalf of each defendant individually as well as jointly, that the Court at this time instruct the jury to acquit the defendants, each and every, all and singular the the defendants present under this indictment; that motion will be based upon all of the grounds set forth in the motion for a directed verdict directed to the Court's attention at the time of the conclusion of the Prosecution's case, as though I again read it in full; may that be stipulated, Mr. Gillis?

Mr. GILLIS.—Yes, certainly.

Mr. FAULKNER.—The first reason being that the evidence is insufficient as to each and every,

and all and singular the defendants, jointly and severally, to warrant, or upon which the Court could base, or the jury could base, a conviction. I [434] know with what thoroughness the Court has considered this matter at a prior time, and I think that the matter was presented with some degree of thoroughness on the part of the defendants; if the Court desires any additional thoughts that I have on the subject presented here at this time I will be pleased to do it; particularly one authority of the Supreme Court of the United States, which holds that a charge of conspiracy outside of the territorial limits of the United States cannot be had under the laws of the United States.

The COURT.—The motions are both denied.

Mr. FAULKNER.—Exception as to all the defendants jointly and severally.

The COURT.—Now, you have some consideration to present with relation to the question as to whether or not the position of the ship should be submitted to the jury.

(Discussion between counsel and Court.)

Is the question of jurisdiction one for the jury?

Mr. FAULKNER.—It is necessary for the jury if the absence of jurisdiction means innocence and the presence of jurisdiction means guilt.

The COURT.—That does not meet my question. The question as to whether or not this Court has jurisdiction to try these defendants, is that for the jury or for the Court?

(Further discussion, in which all counsel and the Court joined.)

I wish you would see if you can find me any authority. It is all right to get some law out of your heads, but I would like to know if the Courts have had anything to say about it.

Mr. GREEN.—We will make a diligent search, your Honor, and I hope the district attorney will, also. [435]

The COURT.—Have you anything further to present, Gentlemen?

Mr. FAULKNER.—Yes, your Honor. This is to be addressed solely to the question of whether jurisdiction is a question of fact for the jury, or a question of law for the Court.

In the case of United States vs. Jacklaw, 1 Black, 487 and 488, the Supreme Court of the United States held that it is the province of the jury to determine the facts relative to the matter of jurisdiction.

In the case of United States vs. Richards, 149 Fed. 455, the Court submitted to the jury the facts relative to jurisdiction, and instructed that a verdict of not guilty be given if in the opinion of the jury the facts on which the prosecution relied to show jurisdiction were not established beyond a reasonable doubt.

This was a case involving a charge of conspiracy.

In United States vs. Saunders, 27 Fed. Cases, No. 16,220, it was held that the question of jurisdiction is one for the jury to determine in a criminal case by general verdict of guilty or not guilty, and that the Court cannot decide the issue as being one of law alone.

In Lennan vs. Hamburg and American S. S. Co., 73 N. Y. App. Div. 358 and 361, it was held that a question of jurisdiction depending upon whether a collision between vessels occurred within or beyond the three-mile limit is one for the jury to determine, and not one for the Court to decide.

Questions of place or location are questions of fact for the jury.

That is a general citation, taken from the Ameri- and English Encyclopedia of Law.

The place of the commission of the offense charged presents questions of fact for the jury to determine in their verdict of [436] guilty or not guilty, and if the evidence does not prove beyond all reasonable doubt that the offense was committed at the place alleged in the charge, the defendant is entitled to a verdict of acquittal.

This is taken from Wharton's "Criminal Evidence." and Bishop's "New Criminal Procedure."

In both civil and criminal cases, where the evidence on the material points is conflicting, or where the facts being undisputed different minds might draw different conclusions from them, the question presented is one of fact for the jury. Many cases are cited. That, again, is a citation from the American and English Encyclopedia of Law.

By his plea of not guilty, the defendant puts in issue every element essential to the charge as laid, including the one relative to venue, as to which his plea in law is tantamount to a denial that the offense was committed at the place alleged. It is for this reason that the issue presented is one of fact for

the determination of the jury, as much as the issue pertaining to the commission of the offense, itself, in the charge specified. It is elementary law that every issue presented by the plea of not guilty is one for the determination of the jury, and not for the Court. Every fact essential to the case of the prosecution involved in the charge as laid, whether the fact is in dispute as a jurisdictional question, or not, is necessarily one for decision by the jury in its exercise of the power conferred upon it exclusively to determine the issue raised by the plea of not guilty, the issue being one that embraces every fact essential to the charge in this case. That is the position that we have heretofore taken. I think the authorities are abundant for a like decision in this case.

I would have presented your Honor with a copy of these, and [437] will if you desire later, but I did not have the time to prepare it.

The COURT.—No, I have taken a memorandum.

Mr. GILLIS.—As I understood it yesterday, if the Court please, the Court desired authorities simply on the jurisdiction as to the individual members taken from the "Quadra."

The COURT.—I think the question is not involved as to the others.

Mr. GILLIS.—No, your Honor. And as to those members, whether or not the Court would submit the matter to the jury, I have this morning one case particularly that I wish to call the Court's attention to, which cites and approves and follows several other cases laying down the same rule of law.

Your Honor mentioned yesterday some decisions with reference to a set of facts where a defendant was extradited from another country and brought into this country on one crime, and then tried on another—

The COURT.—I had in mind the blood money cases, and U. S. vs. Rausch.

Mr. GILLIS.—It is established as a fact that one country cannot extradite from another country for a certain crime, and then try that man on a different crime when he is brought into the country. That is based on the good faith between nations, and the treaty relationship between nations. The rule, however, as to individuals, and the jurisdiction of the Court over them is as follows, and this is a general rule that has been followed by all of these cases, that where a person accused of a crime is found in the territorial jurisdiction wherein he is so charged, the right to put him on trial for the offense charged is not impaired by the fact that he was brought from another jurisdiction by illegal means, such as kidnapping, unlawful force, fraud, or the like. That is the general rule. [438]

The COURT.—What case are you reading Pettibone and Heywood were arrested in Idaho. from?

Mr. GILLIS.—I read the general rule that is followed and set out in the Pettibone Case, when That is in 203 U. S. 192; 51 Law. Ed. 149. That rule is specifically declared to be the law in that case. Justice Harlan wrote the opinion. This

case is based upon he case of Ker vs. Illinois, 119 U. S. 436.

The COURT.—That was the Peruvian Case.

Mr. GILLIS.—Yes, that was the Peruvian Case, in which case a man fled to Peru, after having committed a crime in this country. They took out extradition papers. When the officer went to Peru he kept the papers in his pocket, he found his man on the street, and he forcibly abducted him, put him on an American ship and brought him to this country. That rule was held to apply to that case, or to any other similar case where the defendant is actually in the jurisdiction of the court. So that so far as the defendants that come from the "Quadra" are concerned the question of the exact location of this ship, when it was seized, and whether or not the seizing officers had a right to seize it, does not enter into the question of jurisdiction in any manner, shape or form. The complete answer under this rule is that the defendants are here in court, and were brought into this court. Under that rule, of course, there would be nothing to submit to the jury, so far as jurisdiction is concerned. I understood that that was the only question your Honor desired authorities on.

Mr. FAULKNER.—I did not understand that your Honor desired authority on a proposition that is conceded. I understood the Court desired to know whether the question of jurisdiction arising as an essential fact in the case, and which on first blush the Court would assume was a ques-

tion of law for it to [439] decide, can ever become a question of fact for the jury.

The COURT.—You are quite right about it.

Mr. FAULKNER.—I think the first authority that I read, the United States Supreme Court decision—the Supreme Court of the United States held that it is the province of the jury to determine the facts relative to the matter of jurisdiction. I do not think I need to distinguish the case Mr. GILLIS cited, because I think your Honor distinguished it yesterday, when you referred to the same principle that he announces this morning.

The COURT.—Of course, Gentlemen, the easy way would be to submit this question to the jury. When your difficulties arise due to the fact that there are so many courts and so many different decisions throughout the whole length and breadth of the land on so many different questions, frequently an abandonment of the recent decisions of various courts on any question, and a resort to the rules as laid down by the fathers will solve a difficulty. I read last night again the long opinion written by Chief Justice Marshall in the case of Aaron Burr, who was indicted for treason and for conspiracy to commit treason. Everybody, of course, is familiar with the dramatic facts of that trial, and what it led to, the political dissensions that it engendered, and, finally, to the death of Mr. Hamilton. The Chief Justice points out therein the clearest and most unmistakable language, that it is easily possible for a man to commit a crime within a jurisdiction, even though he

may never have been within that jurisdiction at all. It is perfectly apparent that that is in accordance with all the authorities, some of which were cited in the opinion which was written when this matter was submitted on the motion to exclude and to return.

The questions that arise with regard to the position of the [440] "Quadra," I take it, are purely and simply questions of law. It is not at all uncommon for the necessity to arise for the Court to determine questions of law in view of the facts. It is true that there are authorities to the effect that a matter of jurisdiction depending upon disputed questions of fact will be submitted to the jury, unless the questions submitted are purely and simply questions of law. The questions submitted are purely and simply questions of law. The questions that arise with regard to the position of the "Quadra" at most could only be two; first, is the evidence of the "Quadra" herself,—the liquor which it is alleged was seized upon her, her log, and things of that kind, admissible in evidence? Nobody would contend that that, even though it depended upon a disputed question of fact, is not a question for the Court; in other words, the Court is bound to determine whether or not evidence proffered is admissible, and it frequently has to determine questions of fact in order to determine that matter. In the final analysis, that is the only real question, this being a criminal prosecution, depending upon the position of the ship at the time of the seizure. It seems to me, however, that there were

questions in regard to the jurisdiction, and for that reason I suggested the argument, and I suggested the doubt that had arisen in my mind due to the decision of the Supreme Court in the Blood Money Cases, and U. S. vs. Rausch. Further reflection upon the subject convinces me that after all the question of jurisdiction, either of the person of these defendants or of the subject matter of the offense charged, is purely and simply a question of law. Now, taking the latter first, as to the offense charged, I hark back again to the decision of the Chief Justice. It is perfectly apparent, to my mind, at least, that the question of law with regard to the crime which is charged in this indictment, must be resolved in favor of the jurisdiction, for the reason whether [441] that ship lay 5.7 miles or 13½ miles from the North Farallones, that the crime, if there was a crime—which I do not say, but if there was a crime it was committed within the Northern District of California, for the very simple reason that nobody could, with any shadow of reason, contend that a man might load liquor upon a boat which was to be delivered within this district and not be a participant—indeed, under the statute, a principal—in the landing of that liquor. That, it seems to me, disposes as a question of law of the matter of jurisdiction of the subject matter.

So far as the jurisdiction over the persons is concerned, it is settled that it makes no difference how or when parties were brought within the jurisdiction, with the one single exception that under the rules of International comity, if a per-

son is brought within the jurisdiction by virtue of a treaty of extradition, they can only be tried for the crime for which they are extradited.

The rule that that is the only exception, and the distinction that as between extradition under the treaty and extradition extra the treaty, was pointed out in a decision which was handed down by the Supreme Court at the same time—on the same day—that they decided the Rausch Case.

In Ker vs. The People of Illinois, the Supreme Court said:

"It is idle, therefore, to claim that, either by express terms or by implication there is given to a fugitive from justice in one of these countries any right to remain and reside in the other; and if the right of asylum means anything it must mean this. The right of the Government of Peru voluntarily to give a party in Ker's condition an asylum in that country is quite a different thing from the right *in* him to demand and insist upon security in such an asylum. The treaty, so far [442] as it regulates the right of asylum at all, is intended to limit this right in the case of one who is proved to be a criminal fleeing from justice, so that, on proper demand and proceedings had therein, the Government of the country of the asylum shall deliver him up to the country where the crime was committed. And to this extent, and to this alone, the treaty does regulate or impose a restriction upon the right of the Government of the country of the asylum to protect the criminal upon removal therefrom."

The Supreme Court clearly draws a distinction between a case where a man is brought by violence, or outside the treaty, from a case where he was brought within the treaty.

The same rule is laid down with a full review of the authorities in Mahon vs. Justice, a decision by Justice Field, reported in 127 U. S. 704. There is particularly a quotation there of the language of the Chancellor of the State of North Carolina, quoted by Judge Field:

"The prisoner is charged with a felonious violation of the laws of this State. It is answered, that other persons have been guilty, in relation to him, of an outrageous violation of the laws of another State, and, therefore, he ought to be discharged." The Court goes on and points out that however he is brought in—provided he is not brought in by the very terms of a treaty—he may be tried.

The same rule has been frequently laid down in England. I need only refer to the celebrated case of Ex Parte Scott, 9 Barneswell & Croswell, 446 where the opinion is by Lord Tenterden, the Chief Justice, in which he points out that a woman who had been seized in Belgium, charged with perjury in England, brought there even in violation of the treaty, could be tried.

So far as the question of the subject matter is concerned, I [443] am satisfied from the evidence that there can be no doubt that the ship was within the limits prescribed by the treaty. The fact that the officers of the "Shawnee" fixed their position by bearings taken across compass,

and then again fixed their position by bearings taken by means of the pelorus, finding that the positions thus fixed were the same identical spot; and that, furthermore, they verified that for a third time by taking the soundings showing the depth of water to be that which was fixed by both of the bearings, across compass and pelorus, satisfies my mind, at least, in spite of the evidence to the contrary, that that was her position.

Of course, it must be apparent to anybody that there has been perjury in this case. Whatever my personal views may be in regard to it, the testimony that has been given here by the officers of the "Shawnee" and the testimony that has been given here by the two others that were produced, cannot both be true in regard to that sounding. I consider it is unnecessary to determine that question, for I am convinced that the Court is bound to take the evidence of the officers of the "Shawnee," at least as to their pelorous and cross compass bearings, and I so find. Therefore, the motion to submit the position of the ship to the jury is denied. The Court will find that the ship was seized within the limits provided by the treaty with Great Britain.

Mr. GREEN.—To which ruling we respectfully note an exception, and also to the Court's remarks.

The COURT.—You may proceed with the argument.

Mr. RIORDAN.—If your Honor please, at this time I desire to bring to the attention of the Court—

Mr. GREEN.—Just a moment, Mr. Riordan. I would like to ask the Court to instruct the jury to disregard the remarks of the Court in so far as they reflect upon the testimony of any witnesses upon either side. [444]

The COURT.—There was no intention to do that, Mr. Green; I said I specifically declined to find which side was committing perjury in this case. The decision, Gentlemen, is on a question of law, alone, as I shall hereafter instruct you. You are the exclusive judges of the facts, and of the weight of the evidence, and of the credibility of the witnesses.

Mr. GREEN.—Of course, your Honor has decided the question, but will you hear any argument on the question of the position of the ship?

The COURT.—I don't think I care to, Mr. Green. I am satisfied on that point.

Mr. FAULKNER.—If the argument, your Honor, were merely directed to the Government's case?

The COURT.—I understand that, Mr. Faulkner, and I have ruled on it. I don't care to hear any further argument.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—If your Honor please, when Mr. Green yesterday sought to introduce some new evidence, when you had previously allowed the Government to introduce evidence, I indicated to your Honor that I had only a formal objection, to which your Honor replied you wished to have all the evidence obtainable to be produced before this jury. At that time I had knowledge of some

evidence that I deemed that was material and competent for this jury, but I could not then connect that knowledge up to present it legally, and I refused to produce anything, or to make an attempt to produce anything that might be prejudicial, knowing that it could not be properly introduced. I have that evidence now, and I have it where I can properly present it to this jury. I would like to have your Honor view that particular phase of the evidence that I have, and I am satisfied that your Honor will feel my position is sound in asking that this case be reopened. [445]

The COURT.—Let me see it. You had better submit that to the counsel, Mr. Riordan.

Mr. FAULKNER.—May we ask that the jury be excluded while we argue this proposition, your Honor?

The COURT.—Yes, I think so. Gentlemen you will please retire for a few minutes.

Mr. FAULKNER.—The basic objection that I desire to call the Court's attention to, before an effort is made to identify this telegram which, of course, has not yet been offered, is that Mr. Riordan has wilfully presented this to your Honor, when every witness that knows of the conduct of Mr. Belanger left for Los Angeles. The men that could have been produced here perhaps to verify whether or not Mr. Belanger was in this city at this time have left. Mr. Riordan had this in his possession yesterday.

The COURT.—Mr. Riordan says that he was not able to check it up yesterday.

Mr. FAULKNER.—If he intended to endeavor to check it up to-day, he should have permitted us to have these witnesses remain. Here was Mr. Mackay, of Los Angeles, in constant communication with Mr. Belanger from May 28th and subsequently; and perhaps on that very day Mr. Belanger was in their office. I know of my own knowledge that in the month of June he was in there repeatedly.

Mr. RIORDAN.—Of course, the only thing, Mr. Faulkner, is this—and I didn't wilfully withhold anything, I took the chance that I might even never get this document in—

Mr. FAULKNER.—But we were entitled to have the people from Los Angeles and Pasadena remain until that fact could be disputed, in the event that it was offered in evidence. [446]

Mr. RIORDAN.—I am prepared to pretty near prove to your satisfaction, Mr. Faulkner, that communication with those people would have been to no avail in this instance.

Mr. FAULKNER.—You cannot prove to my satisfaction that the burden was not on you to permit me to have those men remain.

Mr. RIORDAN.—If the Court admits this, I feel, of course that Mr. Belanger and the counsel are entitled to some consideration, if your Honor sees fit to admit it.

The COURT.—Mr. Riordan, if I admitted it I would certainly, if these gentlemen claim that Mr. Belanger, for instance, was in Los Angeles at the time that this telegram is alleged to have been

sent for San Francisco, I would certainly have to take a continuance and give them a chance to present those people. I don't want to do that.

Mr. RIORDAN.—I don't wish to be presumptuous, your Honor, but I do feel that with the connections I have in this case, that when I have presented the witnesses, all the alibi witnesses that counsel can produce to say he was somewhere else will be of no avail. I have documentary evidence to show he was here.

Mr. FAULKNER.—I cannot testify to the fact, your Honor, but I know from examining the records of Flint & Mackay, that Mr. Belanger was in there on a date within two or three days of that, in connection with this oil proposition, the evidence as to which must satisfy everyone that that was his business. There were condemnation suits. He was served with summons and complaint in suits pending in New Mexico. And there were suits on labor claims. There are the accurate records of that office that are indisputable. The only friends Mr. Belanger has in the United States are in Pasadena and in Los Angeles; the others are in Edmonton and Vancouver.

The COURT.—How long would it take you to get those men [447] up here?

Mr. FAULKNER.—If those men know that he was there at that time, it would naturally take but a short time. We would have to consult with Mrs. Belanger. He may have been in Vancouver; he has been in Vancouver a number of times. As your Honor well knows, he has been in Canada since this indictment. He has been in Edmonton.

Mr. Belanger has immense holdings in Edmonton. He has had negotiations concerning the sale of his property, which have been going on a long time. He has consulted his lawyers in Edmonton and in Vancouver concerning them. In justice to Mr. Belanger, no representation could be made to your Honor as to the time to be taken. I think your Honor will appreciate that this evidence, coming as it does, puts us in a position where we could not possibly defend it unless ample opportunity is given us. If a trip was necessary to Vancouver, your Honor well knows that, using all speed and expedition, it would require ten days.

Mr. RIORDAN.—What would your Honor say to this state of facts: If on the date that the telegram bears on its face, on that very date, over his own signature—and his signatures have been heretofore proven, is the signature of C. H. Belanger on a register in a hotel in this city? What is the use of producing alibi witnesses? That is the state of this evidence. How can your Honor overcome that? It is a damaging piece of evidence.

The COURT.—I will allow you, gentlemen, ten minutes to consult with your client. Is Mrs. Belanger here?

Mr. FAULKNER.—Yes, I think she is.

The COURT.—I will take a recess for ten minutes.

(After recess.)

Mr. FAULKNER.—If your Honor please, I appreciate that this [448] is a matter resting in

the sound discretion of the Court. The papers that are to be produced to connect this telegram with Mr. Belanger have been in the possession of the prosecution for a great many days. The gentleman from the hotel that will identify his presence in San Francisco has been in attendance upon the Court for a great many days. I have talked to my client, and, without waiving any objections to any identification of the telegram, we can disprove that anything referred to in that transaction, in that telegram, is connected in any way with liquor in any shape or form. When I was in Los Angeles, going over this matter with other people, I telephoned to Mr. H. L. Williams, in Seattle, with the thought that if the evidence I produced was not satisfactory to your Honor, that he could come and explain the entire transaction concerning this oil deal. At this particular time I am advised that the derricks in connection with shipments to New Mexico, and lumber in connection with that, were being sent to New Mexico, and that subsequently the lumber was sold for freight charges. In the light of that situation, if your Honor lets that evidence go in, of necessity we should be entitled to explain to the jury the innocence of it. Your Honor will recall, on the admission into evidence of these other telegrams, the only theory for their admission was that they showed a criminal connection on the part of Mr. Belanger. I don't think I just indicated that they did not, I think I demonstrated it. I strenuously urge with all earnestness that

to permit the district attorney, after his case is closed, to put in evidence a telegram that he has had for a long period of time, and the identification of the presence of Mr. Belanger by a man who has been in attendance on the Court for a great many days, with a record that has been in the possession of the district attorney for a great many days, I genuinely believe, your Honor, is an abuse of the sound discretion [449] that I know your Honor will exercise.

The COURT.—The real difficulty, Mr. Riordan, is that counsel claims that the reference in that telegram he can prove to have been to something else than liquor. If that is so, it means a continuance, because, of course, I would not admit that without giving the defendants such continuance as was necessary, even if it were a month, to produce evidence to the contrary. If that kind of evidence is produced, it simply makes another conflict for the jury to determine.

Mr. RIORDAN.—I heard counsel's offer, your Honor, and I would seriously take it up with my associate and with Mr. Carr as to the offer there made in the record, as to whether we would not stipulate, as against this telegram, the evidence that he there states can be proven.

Mr. FAULKNER.—No, your Honor.

Mr. RIORDAN.—I am saying that I would seriously consider that from our standpoint. Mr. Faulkner, in his anxiety to protect his client, is a little over-suspicious. I am prepared to prove, although this is collateral to the issue here at this time, that this telegram came into my hands

yesterday, as I was coming into court, at which time, when I came in, I told Mr. Faulkner I hoped to be able to prove, but could not prove, a certain document that I had. I have the witness in court now for the first time. The hotel man, who is here in court, was never at any time in court for this purpose until to-day. He was here to identify Mr. Belanger's signature in regard to other matters—other than telegrams, I believe—that I have heretofore introduced. This is no plot or plan on our part at all, your Honor.

The COURT.—Oh, no.

Mr. FAULKNER.—I apologize to Mr. Riordan.

Mr. RIORDAN.—Mr. Faulkner made himself quite outspoken to [450] me since the adjournment for the recess. I don't play the game that way, and I rather resent it.

Mr. FAULKNER.—It was made on the supposed statement that you had a telegram which you could not connect up. When the gentleman told me that he was in attendance on this court for the last three or four days, I had a right to believe that that was the purpose of his presence here. As for the stipulation—Mr. Williams, of Seattle, is a man that can clear the entire transaction for Mr. Belanger. They were intimate associates for a great number of months in connection with this proposition. The record of a railroad company as to the purchase and the shipment of merchandise to Farmington, New Mexico, is not a matter easy to get—the sale of that and the time of its delivery, etc.

The COURT.—Let me see that telegram again.

Mr. RIORDAN.—The man mentioned in the telegram is very significant, your Honor.

The COURT.—What is the explanation you expect to show?

Mr. FAULKNER.—I would expect to show, if the Court please, that if that telegram was sent by Mr. Belanger, the only business that Mr. Belanger ever had with Mr. Norgan was a business in connection with oil, and that at that particular time, a short time after Mr. Belanger had donated $12,000 to this cause, and was obligated to pay an additional sum—will your Honor pardon me, Mr. Belanger wants to speak to me.

The COURT.—Certainly, Mr. Faulkner.

Mr. FAULKNER.—That was their general association. Now, the extent of the proof that can be offered concerning their relationship, as your Honor knows, would be impossible to indicate. I think we should have the right to show the only association between these two men and what it can possibly refer to.

The COURT.—"Merchandise not yet reached market": What do [451] you expect to show in regard to that? The jury is not here.

Mr. FAULKNER.—The difficulty about that, your Honor, is one that refers particularly to lumber, whether it refers to derricks, or what it refers to, I cannot say now.

The COURT.—What is this, "Have appointment with Vince to-morrow"?

Mr. FAULKNER.—I don't know a thing about that.

The COURT.—Your explanation does not explain.

Mr. FAULKNER.—Wait just a minute, your Honor. Mr. Williams and Mr. Norgan, and the Mr. Vince referred to there—he was also interested in this proposition, which can be shown.

Mr. COGHLAN.—There had been some proposition of that kind made to him, to interest him in this same oil scheme.

The COURT.—What is the merchandise that had not yet arrived in the market? Does that refer to lumber that was shipped down to this oil place and that was sold for nonpayment of freight? That does not sound reasonable.

Mr. FAULKNER.—The difficulty there is, we cannot determine which particular phase of the oil proposition was in progress then. We do know that that particular telegram refers to oil, and we will demonstrate it.

The COURT.—I will hear the evidence on the admission of the telegram.

Mr. FAULKNER.—It won't be admitted until it is identified, your Honor?

The COURT.—Oh, no. You may be assured, Mr. Faulkner, that if you want one day, one week, or one month, whatever time is necessary for you to produce your evidence, it will be allowed. Call the jury back.

Mr. RIORDAN.—I will call Mr. Kitchen. [452]

TESTIMONY OF S. G. KITCHEN, FOR THE UNITED STATES (RECALLED).

S. G. KITCHEN, a witness recalled in behalf of the United States, testified as follows:

I am city manager of the Postal Telegraph Co. The telegram shown me, dated June 24, 1924, is from our official records. That was taken from the files and brought here by me personally. By examining this telegram I can tell that the message was taken, that is, the message was filed at our office in the St. Francis Hotel.

Mr. RIORDAN.—At this time I offer the telegram in evidence for identification.

(The telegram was here marked, U. S. Exhibit 61 for identification.)

TESTIMONY OF MRS. ELLA EDWARDS, FOR THE UNITED STATES.

Mrs. ELLA EDWARDS, a witness called in behalf of the United States, being first duly sworn, testified as follows:

In the month of June, 1924, I was night manager for the Postal Telegraph Company, at the St. Francis hotel. The telegram shown me dated June 24, 1924, I identify. I identify it by my handwriting that is on it, and I was there at that time. My handwriting is the address taken, and also the sending of the message. I sent the message over the wire myself. I know I sent it myself, because I have the number on it, and I have the signature of

(Testimony of Mrs. Ella Edwards.)

the receiving operator—the letters, and the time. I asked the one that filed the message his name and address, and I put it on the bottom of the telegram. That is my handwriting.

On cross-examination, the witness testified as follows:

I was shown this telegram last night. My recollection is based upon the display of that telegram to me. [453]

TESTIMONY OF C. W. CONNORS, FOR THE UNITED STATES.

C. W. CONNORS, a witness called in behalf of the United States, being first duly sworn, testified as follows:

On June 24, 1924, I was clerk at the Somerton Hotel, San Francisco. I know Mr. Belanger. The record now shown me is the register of the Hotel Somerton for Tuesday, June 24, 1924. That came from our official records at the hotel. I presented that personally to you this morning. The signature, "C. H. Belanger, L. A." was written by Mr. Belanger, himself.

Mr. RIORDAN.— I offer the Hotel Somerton record for the date indicated, Tuesday, June 24, 1924, particularly for the purpose of the signature, "C. H. Belanger, L. A."

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and no proper foundation laid. That objection applies as to all of the defendants.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(The document was here marked U. S. Exhibit 62.)

Mr. RIORDAN.—I now offer in evidence the telegram heretofore admitted for identification.

Mr. FAULKNER.—I object to that, if the Court please, as immaterial, irrelevant and incompetent, and truly no foundation has been laid. There is no evidence whatever as to the identity of the sender of this telegram. The notation made by the young lady at the time of sending does not indicate that the person sending is the person whose name is written; it is merely the address that she wrote of some person who has not been identified. To get this telegram properly in evidence, there should be an identification of the person that sent it.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception. [454]

Mr. COGHLAN.—We offer the same objection, that there is no proper foundation laid.

The COURT.—The objection can apply to all the defendants.

Mr. RIORDAN.—I will read this telegram to the jury: (Reading:)

RUSH WIRE.

San Francisco, June 24/24.

"Geo. Norgan,

"Room 1052 Biltmore Hotel,

"Los Angeles, Calif.

"Merchandise not yet reached market. There-

fore cannot report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H."

Mr. FAULKNER.—As we stated to your Honor, I ask a continuance and I want to put it at a minimum of a week, to prepare a defense to that telegram.

The COURT.—Very well, you may have it.

The COURT.—You may proceed, Gentlemen.

Mr. FAULKNER.—If your Honor please, I don't know that the record shows—in fact, I think it does not show—that we took an exception to the reopening of the case by the prosecution. I ask that the Court allow us an exception.

The COURT.—Yes.

TESTIMONY OF HENRY L. WILLIAMS, FOR THE DEFENDANTS.

HENRY L. WILLIAMS, called as a witness for defendants being first duly sworn, testified as follows:

My name is Henry L. Williams. I reside at this time in Seattle, Washington. I was in business in the State of California up to October, 1924. I have been in the oil business for the last ten or fifteen years, in New Mexico and Canada. Referring to the year 1924, I was in the oil business in New Mexico. I know C. H. Belanger. He was inter-

(Testimony of Henry L. Williams.)

ested with me in New Mexico. My association with Mr. Belanger in the oil proposition in New Mexico commenced in the latter part of January or the early part of February. Mr. Belanger was financing that [455] business. The source of his financing was his own personal money, and from some friends of his. The friends were in Los Angeles, San Francisco and Canada. When we began to discuss going into New Mexico, he said he had some friends that were interested in Signal Hill, whom he thought would become interested if the proposition was considered satisfactory. He also mentioned some friends he had in Canada that he could interest. He mentioned the name of Vincent Quartararo, who was operating in Signal Hill; a man by the name of Nard, who resided in Los Angeles and was operating in Signal Hill; a man by the name of Norgan, in Canada, I recognize this telegram handed to me of date February 21st. That is a telegram I sent to Mr. Belanger while I was in New York. I got this particular telegram from Mr. Belanger's files, the gentleman who is the addressee of the telegram; I got that within the last few days.

Mr. FAULKNER.—I ask that this telegram, dated February 21, 1924, be admitted in evidence. I will read it to the jury:

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(Testimony of Henry L. Williams.)

DEFENDANTS' EXHIBIT "R."

"New York, February 21, 1924.

"C. H. Belanger,

"1108 North Heliotrope Drive,

"Los Angeles, Calif.

"Raised fifteen thousand to sink well on the structure work start immediately stop our profit overriding royalty five per cent and half interest in property last profit independent of Jacobs wire me Southern Hotel, Baltimore. Think we might start work on raising more money on coast in about ten days stop will stop off at Farmington on my way back.

"H. WILLIAMS."

(The telegram was here marked Defendants' Exhibit "R.")

WITNESS.—(Continuing.) The original records of the oil company in connection with this transaction are in Farmington, New Mexico, and some in the office of Flint & Mackay, in [456] Los Angeles. I received a reply to the telegram that just has been read. The first one was received upon my arrival in Baltimore and the second one was in reply to my wire. I recognize these two instruments. I got these from the files of Mr. Belanger. There is not any question in my mind but that they are the telegrams that I received. I got these from Mr. Belanger, I think it was yesterday.

Mr. FAULKNER.—The first one is on a Western Union Telegraph blank. It reads as follows:

DEFENDANTS' EXHIBIT "S."

"H. L. Williams,

"Care Southern Hotel,

"Baltimore, Md.

"Telegram and letter received. Very pleased of good prospects. Hoping you will be successful in Baltimore. Have seen Frisco party and believe that he could be interested. Stop. Expect to leave for Vancouver sometimes next week but will advise you. In meantime address all correspondence to Los Angeles. Best wishes.

C. H. BELINGER."

(The telegram was here marked Defendants' Exhibit "S.")

DEFENDANTS' EXHIBIT "T."

The other one reads as follows:

"H. L. Williams,

"Southern Hotel,

"Baltimore.

"Wired you last night that your letter was received; also have seen Frisco party. Feeling sure he can be interested. Stop. Pleased you have raised fifteen thousands, feeling satisfied that we can raised money on Pacific Coast. Stop. Have to go north soon, but if you are coming this way soon will wait for you to assist in financing. Best luck.

C. H. BELANGER."

(The telegram was here marked Defendants' Exhibit "T.")

(Testimony of Henry L. Williams.)

WITNESS.—(Continuing.) The "Frisco party" who is referred to in that telegram is Vincent Quartararo. Mr. Quartararo was not interested in this proposition at that particular time. [457] Mr. Belanger, Mr. Nard, and Mr. Norgan and associates were interested in the proposition in its inception, that is, February, March, April, etc. I first met Mr. Norgan at the Fairmont Hotel in this city in the month of March. At that time he indicated that he would become interested in this oil proposition. He was to contribute $20,000. He was to have an interest in certain property which was identified as Well No. 7. We received money from Mr. Norgan. The money was sent to Mr. Belanger, but through some delay—it was wired to him at the First National Bank at Hollywood, and they were four or five days trying to locate it, and it was located and transferred in the First National Bank from Mr. Belanger's account to mine. Subsequent to the receipt of these telegrams, there was some production struck at a place called Bloomfield, in the San Juan Basin, and I succeeded in acquiring some acreage there. When that discovery was made in Bloomfield, I advised Mr. Belanger of the fact.

Mr. FAULKNER.—I offer these telegrams in evidence. They are as follows:

"Farmington, New Mexico, April 26, 1924.
"C. H. Belanger,
"No. 1108 Heliotrope Drive.
"Los Angeles, Calif.

"Expect close lease deal, will let you know later stop Reported oil struck at Bloomfield about fifteen miles from Farmington, am going out will report later, everything going fine here, regards.

H. L. WILLIAMS."

"Aztec, New Mexico, April 28, 1924.
"C. H. Belanger,
"Care Somerton Hotel,
"San Francisco, Calif.

"Should come for five hundred and found also we furnish him car stop but consider him worth more stop number [458] three down two hundred and seven feet stop Bloomfield well looks like a producer. Am trying get some acreage on same structure. Have not closed up another deal yet. Have lawyer looking up titles in leases.

H. L. WILLIAMS."

"Aztec, New Mexico, April 28, 1924.
"C. H. Belanger,
"Care Sommerton Hotel,
"San Francisco, Calif.

"Am unable to include acreage near Lidecker well in deal for twenty-four hundred acres but think we should take this acreage as it adjoins the Ute reserve and is on structure the Government have issued their first notice of auction sale of Ute re-

(Testimony of Henry L. Williams.)

serve to-day. Auction will be held at Durango, Colorado, June tenth at two o'clock Stop Have closed deal subject to your approval on fourteen hundred seventy acres at one dollar per acre bonus and one-eighth royalty near Bloomfield well. Some of this acreage is within one mile of well and all on structure. Do not see how we can lose on this acreage. Stop. If satisfactory to you wire me at once and telegraph money to First National at Farmington."

WITNESS.—(Continuing.) I know that further effort was made to induce people who were associated with me in the basic proposition, and other people in the Bloomfield proposition. I left New Mexico in May, brought the records with me, and proceeded to form a holding company called the Metropole Oil Co. We were then going to form subsidiary companies. The Metropole was in the process of completion during the month of June. Mr. Teviotdale, who was one of the directors of the Metropole, left for the old country, and matters were more or less held up, so far as the Metropole was concerned. The Bloomfield was in my name, and we went ahead and proceeded to try [459] and interest—or Mr. Belanger did, to interest people in the Bloomfield field. The people who were interested in the basic proposition in New Mexico, which was in the course of operation in April, 1924, were not obligated in any other way to finance any other proposition. I afterwards acquired some acreage in Bloomfield, but the people in New Mexico

(Testimony of Henry L. Williams.)

were not able to finance that proposition. Mr. Belanger was interested in financing that acreage. There were other persons interested, or to become interested in it. They were Mr. Vincent Quartararo and Mr. Norgan. I discussed the Bloomfield acreage with Mr. Norgan in Los Angeles, in June, on the 22d of June. I fix that day because I went to the Biltmore Hotel and looked at the register. Mr. Norgan came to my house with Mr. Belanger. Mr. Norgan arrived at the Biltmore on the 21st and he was at my house on the 22d, which was Sunday. There was $20,000 due, of which $12,000 had been paid; I contended that the $8.000 was on call; Mr. Norgan contended that it was only payable when the equipment reached New Mexico. I wanted the money. I had ordered a lot of equipment in New Mexico, and made arrangements to get this equipment on the ground as quickly as possible, as there was some question—there was a question at that time as to whether the United States was going to issue permits. It was rumored around that they were going to grant permits wherever equipment was installed, and we were doing our best to get the equipment on our claims. At that particular time there was equipment en route from the places we purchased it to this oil field in New Mexico. I was very much concerned concerning that equipment. At this particular time that we were discussing this matter with Mr. Norgan, the sending of the equipment, there were a great many telegrams exchanged between me and the representative

(Testimony of Henry L. Williams.)

in New Mexico concerning equipment. The New Mexico representative was [460] Mr. Turner. He was there in part of May and in June. I had occasion to have all those telegrams copied by the stenographer in my office. The reason for copying them was that along about the 7th or 8th of July I became suspicious that there was something wrong in New Mexico; Turner's wire did not seem to me to be right. I received a wire from our attorney there. I recognize this instrument which reads, on top, "Telegrams from Len Turner, Farmington, New Mexico, to H. L. Williams"; also, "Telegrams from H. L. Williams, Los Angeles, to Len Turner." The telegrams indicated there as telegrams from Turner to me I actually received; those indicated as telegrams from me to Turner I actually sent. I got this paper from Mr. Belanger's files yesterday. The originals of these telegrams that I sent are in New Mexico; also the originals of the ones that I received myself are in New Mexico. New Mexico was our head office. I moved down from Los Angeles to New Mexico and took all those documents there. I had this made from telegrams that were on hand when I discovered that Turner was not stating facts. This instrument was made in Los Angeles.

Mr. FAULKNER.—I will offer this in evidence. I am not attempting to offer the letters in it. I will read one or two very short telegrams here; the rest counsel can read if they wish:

DEFENDANTS' EXHIBIT "V."

June 22nd:

"Ship by express to Gallup crank for twenty-eight machine."

June 23:

"Can you buy water pump lift on one hundred feet two-inch line when did crank leave city. Number one waiting for cement to set under mast. Two waiting on casing. Number three in line at eleven hundred and ninety-four. Expect oil sand within fifty feet. Looks very good five 382." [461]

June 26:

"Will assume operations on all wells except number two to-morrow. Number three should be ready to drill in within three days Will drop casing question until we hear from you Will use economical methods in all operations Four carloads of freight due in Aztec tomorrow. Will send complete report by mail twenty seventh."

July 4:

"Car broke down in Durango Will be out the fifth Setting eight and quarter casing number three four five twenty Validation almost through."

Telegrams from Mr. Williams to Len Turner:

June 24:

"Star Drilling Company expressed crank and shaft this morning Should be in Gallup tomorrow sometime Express prepaid Keep me fully advised as to progress of number three Am greatly interested."

(Testimony of Henry L. Williams.)

June 25:

"Get Dehart to help you make up statement of all outstanding accounts and forward here at once Advise me amount of money necessary to pay freight Please advise me what your money requirements will be as far in advance as possible Rig now at Durango Should be unloaded at Aztec for Newton claim Denver and Rio Grande Freight agent gave me rate two seventy-five per hundred. Will leave for there as soon as deal now about completed here is closed. We will give you bookkeeper establish definite payday and matters will run smoothly from then on."

(The document was here marked Defendants' Exhibit "V.")

WITNESS.—(Continuing.) The situation outlined in those telegrams was discussed with Mr. Norgan at that time, and the situation in regard to permits was also discussed. I indicated [462] to the gentlemen present at that discussion that it was doubtful whether the Government would issue a permit, whether we put the rig on there, or not, but that we would have to use that rig and we might as well use it as leave it lying idle, and suggested that we pay Mr. Norgan's syndicate something for the use of it. Mr. Norgan wanted to know where we wanted to use it, and I told him in Bloomfield. He said he would not mind taking a shot at it. Mr. Belanger stated that he thought Mr. Vincent Quartararo would be interested, and would take the matter up with him. I had already ordered the derrick

(Testimony of Henry L. Williams.)

and camp, and timbers, and a lot of pipe, and I needed the balance of this money. Norgan stated that he had stated to his friends that this money was not to be paid until the equipment was on the ground, and that he would not pay the money over until then. I was to notify Mr. Belanger when it was on, and he was then to pay the money over with regard to the completion of the first deal. In other words, the authority to pay the money was to come from Mr. Belanger. Mr. Belanger left for San Francisco either Sunday or Monday, and called me up on the long distance 'phone. I told him that the equipment had not arrived, and that part of the merchandise that was to be shipped with the rig was following as way freight, that is, local freight; it was not a shipment in a carload lot. He said at that time that Mr. Quartararo was interested. He stated that he would have to notify Mr. Norgan that the equipment was not there. I bought this equipment from the Henry Supply Co., at Santa Paula. Some of the supplies that were bought from Henry & Endicott or Mr. Henry, were supplies in which Mr. Norgan was interested, they were for his particular well.

On cross-examination, the witness testified as follows:

I was operating in oil in Canada. I went to Canada in 1904 and I left there in January, 1924. My headquarters were Edmonton, [463] Alberta. I have been in Vancouver once or twice, for a few days. I am not acquainted at all around Vancouver.

(Testimony of Henry L. Williams.)

I know a few people there, very few. I never met Mr. Belanger in Vancouver, to my recollection; I am quite positive I never met him there. I met Mr. Belanger in Canada first in 1907. I lived next door to him. I knew him fairly well, and continued to know him fairly well up to the time Mr. Belanger left Canada. He left Canada before I did. He told me he left Canada three years before I did. I was drilling up in the Peace River from 1918 up to 1924. I left there in 1923. I was away from Edmonton practically all the time. My first conversation with Mr. Belanger with reference to these oil fields in New Mexico was in January, 1924. I happened to run into Mr. Belanger in the Alexandria Hotel lobby. He wanted to know what I was doing in that country. I told him I had left Canada, and that I thought possibly I would go over to Java. We talked over old times. He invited me out to his house. He took me out and showed me some real estate that he had. He told me that he thought I had made a great mistake in staying in Canada so many years. He took me out and showed me Signal Hill, and what I had missed, etc., etc. He was interested in Signal Hill. I did not then interest him in my oil fields in New Mexico, that was a few days later. I had not been in Los Angeles since 1899, and I ran into some old friends of mine. I used to operate in Los Angeles. They wanted to know where I had been. After I had met a friend of mine who explained about New Mexico, then I told Mr. Belanger and Mr. Belanger said that if I was satisfied

(Testimony of Henry L. Williams.)

to go into New Mexico that he would not mind going in with me. That was the latter part of January. There was a man in Los Angeles who had a large amount of acreage in New Mexico. I was trying to make a deal for this acreage. It [464] involved the drilling of at least four wells. Mr. Belanger was willing to finance two of them at that time, and stated that he had some friends that were interested in Signal Hill, in the oil game, understood the oil game, and he thought they would be quite willing to go into this proposition. He told me there was a Mr. Vincent Quartararo at the head of his syndicate, that he operated in Signal Hill, and a Mr. J. B. Nard, at the head of another syndicate that was in there drilling a well. He mentioned some people in Canada. He mentioned Mr. Norgan and a man by the name of Rogers who lived up in Alberta. I did not know Norgan at that time, I had never heard of him. I do not recall that he mentioned any others, unless he mentioned Mr. Teviotdale, and possibly a Mr. Short, who had been interested with him—an attorney at law in Edmonton, and a Mr. Cross. That is all I can recall at this time. He said that Mr. Quartararo was the head of a syndicate that was drilling a well in Signal Hill. I am not positive whether he said that Mr. Belanger was interested in that with Mr. Quartararo, or in the Nard Syndicate, but he did say that he and Mr. Teviotdale owned, I think it was, four units of $1,000 each in one of those syndicates, either Mr. Quartararo's or Mr. Nard's. I had not

(Testimony of Henry L. Williams.)

known Mr. Nard before. I met him after that time at the Biltmore Hotel, some time after that. That was upon my return from my eastern trip, approximately some time in March, 1924. I met him with Mr. Belanger. Mr. Norgan was not there. I had some talk with Mr. Nard. He did not tell me what his business was at that particular time. He did not say he was from Canada, he didn't say where he was from. I did not know at that time where he was from. I saw Mr. Nard in Seattle about six weeks ago. I believe he lives in Los Angeles. I do not know what his business is at the present time. [465] He was building some courts, I believe the*m* called them Lemon Grove Courts; in fact, we were going to rent one of them. He was fitting them up and selling them. He had a thousand acres of land down in San Diego. I never heard him mention the liquor business, or his connection with any liquor business. I do not know where he is to-day. These telegrams that I have referred to, I got those yesterday at Mr. Belanger's apartment. I went down to Los Angeles on Saturday for the purpose of going through the files that were in the office of Flint & Mackay; I went through those, and then went out to Mr. Belanger's apartment in Los Angeles. He just opened the files and we went through them; I guess we were both working on the files, they were spread out there on a table. Naturally, we had some conversation at the time, he told me of this case, and asked me if I would come up and identify these telegrams that

(Testimony of Henry L. Williams.)

came out of his files. Mr. Quartararo's name was mentioned in January or the early part of February. Belanger said he thought he could get some money from him or interest him to put some money into this New Mexico deal. He did not indicate how much money he might possibly get from him. I don't remember whether he said Quartararo was pretty well fixed with money. He said that Quartararo was interested in the Signal Hill, at the head of the syndicate. It cost about $250,000 to drill a well in Signal Hill—well, from $100,000— He didn't discuss that that was Mr. Quartararo's only business, or what business he was in. I was interested at that time in seeing money put into this New Mexico proposition. I put just about $3,000 in it. My particular interest in the syndicate was my experience. I had a half interest in the first place. Mr. Belanger had the other half interest. The two of us owned the entire proposition. And Mr. Belanger, for his half, was to [466] secure the money end of it, and I was to put up my experience and knowledge of the oil game for the other half. I did not meet Mr. Quartararo, I never met him. I was in San Francisco and met Mr. Norgan. I was here two or three days. I did not meet Mr. Quartararo with reference to this business. I never have seen him; I could not tell you which gentleman here is Mr. Quartararo. About $135,000 was put into this New Mexico proposition. Mr. Belanger, himself, put in approximately $30,000. Mr. Norgan and his associates put in $20,000. I do not know

(Testimony of Henry L. Williams.)

that Mr. Quartararo put in anything. Most of this money that was put up was wired to the First National Bank in Farmington, New Mexico, subject to my order. I was the man that was handling the paying out of the money. The only way I knew Mr. Quartararo in this whole proposition was through Mr. Belanger, and what Mr. Belanger told me. I do not know who Mr. Norgan's associates were in this proposition. I understand Mr. Norgan lives in Vancouver or Victoria; I am not sure whether he said Vancouver or Victoria, I think it was Victoria. I do not know how many men were in the Norgan syndicate, I dealt solely with Mr. Norgan. There was no stock issued, the company was not completed. I transferred the property to Mr. Bowen, of the firm of Flint & Mackay, as trustee for the Metropole Oil Corporation. The Metropole Oil Corporation was to issue to Mr. Norgan a transfer of an undivided one-half interest in Well No. 7, the acreage covered by Well No. 7. I had not the slightest idea in the world as to who Mr. Norgan's associates were. Mr. Norgan, from his conversation with me, seemed pretty well interested in the deal. He did tell me that he had interested a number of his friends in Vancouver. I am quite sure he did not mention any of those friends to me. I saw Mr. Norgan on the 22d of June, 1924, [467] in Los Angeles. I never saw him after that day. I do not know when he left Los Angeles. I had a talk with him at that time in reference to this oil deal, and at the conclusion

(Testimony of Henry L. Williams.)

of that conversation there were some matters that were left undecided and they were left entirely in Mr. Belanger's hands. He was dealing with Mr. Norgan—not I. Mr. Norgan was Mr. Belanger's particular friend, and not mine. I had the actual handling of the running of the property in New Mexico. They were entirely under my control. Although Mr. Norgan may have been in Los Angeles until the 30th of June, I did not see him after June 22d. I knew where he was stopping. Mr. Norgan did not say he would like to talk over things again. So far as we were concerned, the conversation was closed on June 22d. Mr. Nard interested a man by the name of Miller—Jack Miller—J. Miller. I saw him a great many times. He had an interest that Mr. Nard assigned to him; he bought a part of Mr. Nard's interest. Mr. Nard was independent of Mr. Norgan, so far as the Norgan syndicate was concerned. I don't know what Jack Miller's business was. I never inquired. I would say that he put $10,000 into the concern at different times. I lived in Los Angeles from the 12th of May up until the 10th of July, and I came back in September and left on the 3d of October, 1924. I heard, I read it in the papers, that this Jack Miller is the same Jack Miller that was convicted recently in Los Angeles of a conspiracy to violate the liquor law. Operations were never begun in this Bloomfield oilfield.

(Testimony of Henry L. Williams.)

On redirect examination, the witness testified as follows:

The reason that this oil-field in New Mexico never actually began operations was that the man that we had down there went wrong, he was not attending to business, and he ran the property into debt. When I left in May, all of the bills were [468] paid with the exception of one or two small bills; when I got back there in July I found that the $17,000 that I had sent him had been wasted, and that the property was $36,000 in debt; when I advised Mr. Belanger and Mr. Nard to that effect they refused to go ahead with the proposition.

TESTIMONY OF HAROLD J. HENRY, FOR DEFENDANTS.

HAROLD J. HENRY, a witness called for the defendants, being first duly sworn, testified as follows:

I am in the oil supply business, associated with Col. F. C. Endicott, in Santa Paula. I have been in business there two and a half years. Our business consists in selling oil supplies, rigs, tools, equipment, camp, etc., everything pertaining to the drilling of a well; in other words, we are prepared to supply everything for a well. I know Mr. H. L. Williams, who just left the witness-stand. I had dealings with him in connection with supplying materials for a place in New Mexico. Those business dealings occurred in the latter part of May and June. He bought from us two complete rigs. I

(Testimony of Harold J. Henry.)

know Mr. Belanger, I met him in Los Angeles. I met him once more in Santa Paula, in May, the latter part, May, 1924, about the time this equipment was being purchased. Mr. Williams purchased from our company two complete rigs, and some goods that were sent up to me from Los Angeles, that were purchased from an oil well supply house in Los Angeles. The rigs I had myself, but they would not be complete without this other merchandise that I had to get from Los Angeles, and I bought that new. That is represented by these two instruments you show me.

Mr. FAULKNER.—Gentlemen, may I just refer briefly to these?

Mr. RIORDAN.—Yes. [469]

Mr. FAULKNER.—There is litigation pending concerning this shipment, and these papers are required in connection with an action in Mexico.

The COURT.—You can just state what they are.

Mr. FAULKNER.—Yes, your Honor. This is a freight bill of the Los Angeles & Santa Barbara Motor Express Co., covering iron rope sockets, blower, box-tool dies, tools, rope, reel wire rope.

The next is a bill from the Oil Well Supply Co., showing a sale to H. J. Henry, Santa Paula, California, of solid rope socket for 7/8 inch line; 2½ inch by 90 feet bell rope; drilling line; No. 7 Little Giant screw plate; No. 4 blower; No. 20 Beaver stock and die. This bill amounts to $628.80.

WITNESS.—(Continuing.) This document bearing at the head of it, "Uniform Straight Bill of

(Testimony of Harold J. Henry.)

Lading," and the figures $628.80, that is for goods from Los Angeles. When I received those goods I placed them on the car with the rest of the equipment. My instructions in regard to sending this equipment to New Mexico came from Mr. Williams, and were to get it on the car as soon as possible. There was no reason indicated for that, except something about a permit, some trouble about a permit —I really don't know what it was. Two of these uniform straight bills of lading are dated, June 3d and one of them is dated June 7th, one June 10th. There are just three of these. Only one car went out on June 3d. This is the original and this is a copy. After this equipment was sent I had occasion to hear from it again. I identify two notices from the Denver & Rio Grande Western R. R. System, both dated the 12th of August, and a communication by registered mail from the Denver & Rio Grande Western R. R. dated September 20, 1924. I received those in connection with that transfer of freight. [470]

Mr. FAULKNER.—I would offer these in evidence; if it is agreeable to the district attorney I would prefer to read them and then return them to the witness.

The COURT.—Yes.

Mr. FAULKNER.—This is a notice from the Denver & Rio Grande Western R. R. System, Denver, Col., August 12, 1924. Mr. Henry and Endicott, Santa Paula, Calif.

"About June 9, 1924, you made a shipment of oil

well machinery, Sou. 116,573, to H. L. Williams, which remains on hand at Aztec, New Mexico, undelivered. Consignee fails to respond to notices or refuses to accept account of on hand undelivered. Please take notice that if positive orders for disposition are not furnished and all charges paid—rush disposition—shipment will be sold for charges as provided by law. Request to return or deliver to another consignee should be accompanied by original bill of lading. Under Commerce Law and Bill of Lading Contract conditions, you are liable for the charges, as follows."

Then there is a waybill reference: "Covered by Santa Paula Way-bill No. S. P. 27. Dated June 9, 1924. Billed by S. P. Yours Truly, J. H. Miller, Agent."

"Carbon copy to H. L. Williams, Aztec, New Mexico, and Farmington."

The next notice is similar in form, except that the shipment is described as "Oil well machinery, S. P. 40838 to H. L. Williams which remains on hand at Aztec, New Mexico, undelivered."

Mr. GILLIS.—What is the date of the notice?

Mr. FAULKNER.—These notices are both dated the 12th of August, 1924.

The letter is from the Denver & Rio Grande Western R. R. System, dated September 20, 1924, addressed to Mr. H. L. Williams, Farmington, New Mexico; Aztec, New Mexico; 136 S. Wilton Drive, Los Angeles, California. [471]

"Mr. Henry Endicott,

"Santa Paula, Calif.,

"Gentlemen:

"There was shipped via the Southern Pacific from Santa Paula, California, June 3, 1924, several shipments of oil well machinery, rigging, and equipment, which he have on hand at Farmington and Aztec, New Mexico, unclaimed.

"Reference to the shipments as billed, cars, and all charges are given below.

"As we cannot allow shipments to remain on hand indefinitely, we hereby give formal notice in accordance with the laws of New Mexico that if the shipments are not accepted by the owners and all charges paid, we will proceed to sell same in accordance with the laws of the State of New Mexico.

"The shipments and the charges are as follows:

"Santa Paula to Farmington, Waybill SP–4 of June 3, 1924, N. P. car 69173, billed as a carload of drilling tools and oil well outfit. Transfer was made at Montrose to narrow gauge D&RGW cars 1642 and 9418. The weight amounts to 34,840 pounds; the freight charges amount to $1650.71, plus $4.50 diversion. As the shipment was received and notice given on June 28, 1924, the demurrage charges up to date are $328.00.

"Santa Paula to Durango, diverted to Aztec, Waybill 27 of June 9, 1924, Southern Pacific car 116573, billed as a carload of oil well material and outfit. Transfer was made at Montrose into nar-

(Testimony of Harold J. Henry.)

row gauge D&RGW cars 6032, 6070 and 9172. The weight amounts to 41,240 pounds; the freight charges amount to $1261.95, plus $2.25 diversion. As the shipment was received and notice given on July 1st, 1924, demurrage charges to date are $318.00.

"Santa Paula to Durango, diverted to Aztec, Waybill 34 of June 10, 1924, Southern Pacific car 40838, billed as a carload of oil well rig and equipment. Transfer was made at Montrose to [472] narrow gauge D&RGW cars 6217, 6018, 6089 and 6079. The weight amounts to 49,000 pounds; the freight charges to $1,499.40 plus $2.25 diversion. As the shipment was received and notice given on July 1, 1924, demurrage charges up to date are $318.00.

"Yours truly,

"J. H. MILLER."

WITNESS.—(Continuing.) Mr. Belanger was present at the time these goods were ordered. I had met him prior to that time. The approximate value of all the goods that I sold was $10,800. I received that money.

TESTIMONY OF J. A. COSTELLO, Jr., FOR DEFENDANTS.

J. A. COSTELLO, Jr., called as a witness for the defendants, being first duly sworn, testified as follows:

Mr. FAULKNER.—I might state to your Honor that this paper I hold in my hand purports to be a printed copy of a certificate for doing business

(Testimony of J. A. Costello, Jr.)

under a fictitious name. Mr. Gillis has agreed that there will be no objection to it on the ground that it is a copy and not the original.

WITNESS.—I entered into a partnership under the name "Group 16." Mr. Quartararo was in the group. The office of the company was in the Humboldt Bank Building, San Francisco. The property was in what is known as Signal Hill. It was the old Transfer 2, or 3, well, that we took over, and we called it Group 16. I identify my name on this paper; my attorney signed it for me. I know of the existence of this association. The name of the defendant Quartararo appears there.

Mr. FAULKNER.—I ask that it be admitted in evidence and marked our exhibit next in order.

(The document was here marked Defendant's Exhibit "W.")

On cross-examination, the witness testified as follows: [473]

I am a contractor—streets, highways, railroads, bridges, etc. I am in business here in San Francisco. Mr. Quartararo had a considerable interest in this oil-well, more than I had. If I recollect right now I think it was in the neighborhood of $14,000, or something along in there, or maybe a little more.

Testimony closed.

Mr. FAULKNER.—I think it is the duty of the defendants to again renew all motions made at the original conclusion of the close by both sides. If you will stipulate, Mr. Gillis, that the motions to

suppress evidence and the motions for directed verdicts may be considered to have been again made in full form, I think that will meet our requirements.

Mr. GILLIS.—That is perfectly agreeable to the Government, and we will so stipulate.

The COURT.—Yes. Motions denied.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—An exception on behalf of all the defendants, your Honor?

The COURT.—Yes, an exception for all the defendants.

(Thereupon the case was argued to the jury by the respective counsel, whereupon the Court delivered its charge to the jury as follows:) [474]

CHARGE TO THE JURY.

The COURT.—(Orally.) I regret very much, Gentlemen, that the necessities of this case have compelled me to keep you here for the very long time that you have been here. I particularly regret that it was necessary to take the continuance that we had for important as it is that the law should be upheld and those who violate it brought before a court and jury punished, if they are guilty, it is of vastly greater importance that persons who are charged with crime should have every opportunity to present any evidence they have to meet anything that may arise in the case and which may be material for the consideration of the jury. While the

case has been long and perhaps to a certain extent weary I feel satisfied that you will agree with the Court that neither side has in anywise delayed it in any manner not made necessary by the necessities of it, and that nothing has been presented by either side which was not fairly bearing upon the rather involved questions presented first to the court and in the last analysis to you. I feel, however, that you Gentlemen will not begrudge the time that you have spent here. The question presented before you is one of the most important that has ever been presented to any court in the land, not only to these defendants because, of course, they are the same as any men that are charged with crime, but to the Government and to the people of the United States as well.

What we may think about a law, Gentlemen, is of no importance; what we do under it transcends everything if this Republic is to endure. While it is true that men outside will and can and do express in writing or in speech, publicly or in private, their opinions with regard to the laws of the country upon the subject of intoxicating liquor no echo of that controversy must come through this door. You and I here under our oaths are [475] bound by the law as it is, not the law as we might think it ought to be. Perhaps it is unnecessary therefore to warn you that if there be any amongst you who are urgently in favor of the law against intoxicating liquor you must lay that aside and not in the slightest degree permit it to be an opinion in your minds against any of these defendants; likewise,

if there are any amongst you who feel that this law is an improper law, or that you are opposed to it in any manner, it is equally incumbent upon you to lay that aside and not consider it in the slightest degree.

Now, Gentlemen, preliminarily a word as to our different functions inasmuch as this is the first and I think it will be the only criminal case that you will try this term. I start out by reminding you that you are the exclusive judges of the facts in the case. With that province the Court has nothing to do.

The Court has never intended nor does it desire to influence you or attempt to influence you in the slightest degree as to any matter of fact arising during the progress of this long and involved case. Likewise, I want to warn you that you must carefully differentiate between the statements of counsel as to what the evidence is and your own recollection of it because it is for you to determine in the last analysis and to refresh your memory in such manner as you may desire as to what any witness has testified to from the witness-stand here.

If during the progress of the case the Court has taken occasion to ask any questions or have made any comments in passing upon any motion or any objection to testimony, or if hereafter during the progress of these instructions I shall have occasion to refer to the legal bearing of any evidence I want you to understand that I am not in any wise intimating [476] anything whatsoever as to the truth or falsity of any evidence, nor the credibility of any witness, those being matters exclusively for you.

Now, Gentlemen, while the facts are for you and while it is for you to determine in your calm and sober judgment, uninfluenced by feeling, prejudice or sympathy, as to what the evidence shows, your power of doing that is by no means arbitrary but must be done with calm deliberation. You are to determine whether or not a witness has sworn true or false by his appearance, his demeanor on the stand, his interest if he has any in the outcome of the litigation, whether or not his evidence is consistent with itself or consistent with the other evidence or admitted facts in the case.

There have been four of these defendants who have taken the stand in their own behalf, two of the officers, Mr. Harris, the First Officer, Mr. Evelyn, the Second Officer, Mr. Gisbourne and Mr. Sargent, two of the members of the crew. I instruct you that under our system of laws men are entitled to testify on their own behalf; and in weighing the testimony of those four gentlemen you must weigh it by the same tests and apply to it the same considerations that you would the testimony of any other witness bearing in mind, of course, their interest in the outcome of it.

On the other hand, Gentlemen, other defendants have not taken the stand on their own behalf. That is absolutely their privilege. Under our Constitution no man can be made a witness against himself. Under our system of laws and our Constitution if a man charged with crime prefers to stand silent and not take the witness-stand that is his privilege and no intendment or presumption of any kind is

to be indulged in against him for his failure to do so. In other words, as [477] to those defendants who did not take the witness-stand, I instruct you that their failure to do so is not to be considered in any manner against them and you are to dismiss that fact entirely from your minds.

The grand jury for this district has presented this indictment against these defendants who are on trial here, and it will be necessary for you to find a verdict of either guilty or not guilty as against all the defendants who are actually on trial, excepting only the defendant Max Ripstein. As to him, Gentlemen, the Court has determined that there is no evidence as to a matter of law to go to you and I therefore instruct you as to the defendant Max Ripstein that you will bring in a verdict of not guilty. As to all of the others the matter is entirely in your hands. And you, Gentlemen, untrammeled by anything except the evidence before you in the light of the law as I shall try to expound it to you, will determine with regard to their guilt or innocence.

The mere fact that the grand jury of this district has presented an indictment against those men is not to be considered by you in any manner as any evidence of their guilt. The indictment is a mere form by which under the provisions of the Constitution of the United States an accusation is presented against men, and under that accusation they are entitled to come before a jury of their own choosing for final determination of the facts. On the contrary, Gentlemen, before you can find these

defendants or either or any of them guilty the government must present evidence that satisfies your minds to a moral certainty and beyond all reasonable doubt.

The rule in civil cases, that the plaintiff may prevail by a preponderance or the greater weight of evidence, does not [478] apply at all to a criminal case. When men are charged with crime they stand before you in spite of the accusation clothed with the presumption of innocence. That presumption, Gentlemen, is not a mere form or figure of speech nor mere fiction of the law but is real evidence in their behalf. They stand before you presumed to be innocent until the Government has established their guilt to the degree that I have explained, namely, to a moral certainty and beyond a reasonable doubt.

A moral certainty, Gentlemen, is that condition which ordinarily produces conviction in an unprejudiced mind. By a reasonable doubt is meant that kind of a doubt which would ordinarily influence men in the most important affairs of their own lives. Of course, it does not mean any kind of a doubt because it is rare indeed that any case can be presented that is free from any doubt. It means, as explained to you, that if there is left in your mind a kind of a doubt which would cause you to hesitate in the most important affairs in your own lives as to any material fact necessary to convict these men, you must find them not guilty.

Now, Gentlemen, these men are charged with having entered into a conspiracy to violate certain laws

of the United States. One of those laws forbids the importation of liquor into the United States in the manner in which it is charged liquor was brought in here, and without payment of the duty; in other words, what is known as the Tariff Act of 1922.

The other law is commonly known as the National Prohibition Act, which prohibits the importation into this country, the sale, the possession and the transportation of intoxicating liquor fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume.

Now, note in the first place, Gentlemen, that these men [479] are not charged with the violation of the Tariff Act of 1922, nor yet are they charged with the violation of the National Prohibition Act. On the contrary they are charged with having entered into a conspiracy to violate one or both of those laws. And however much, Gentlemen, you may be convinced from the evidence that any of these defendants have been guiltly of a violation of those two laws you cannot find them guilty unless you find that they entered into a conspiracy which I will now take occasion to define to you.

In that behalf, Gentlemen, something was said here in argument about there being indictments also on file charging these men with violation of the substantive laws, that is, the Tariff Act and the National Prohibition Act; that is, of course, no concern of yours or mine in this particular case. The law of the United States, adopted long ago, long before there was any Prohibition Act ever heard of,

made it a crime to enter into a conspiracy to violate any statute of the United States or to defraud this country. That is known as Section 37 of the Criminal Code of the United States. It reads as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty," and so forth.

It is not difficult, Gentlemen, to understand what is meant by Section 37 which denounces a conspiracy. It is formed "when two or more persons agree to do an unlawful act; in other words, when they combine to accomplish, by their united action, a criminal or unlawful purpose, or some purpose not [480] in itself criminal or unlawful, by criminal or unlawful means; and the offense is complete when one or more of the parties so agreeing together does any act to effect the object of the conspiracy.

"To constitute a conspiracy, it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, in words, or in writing, state what the unlawful scheme is to be, or the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, come to a mutual understanding to accomplish the common and unlawful design. Where an unlawful end is sought to be effected, and two or more persons, actuated by

a common purpose of accomplishing that end, work together in furtherance of the unlawful scheme, such persons become conspirators, although the part which any one of them is to take in the conspiracy is a subordinate one, or is to be executed at a remote distance from the other conspirators.

"In determining the question of the existence of a conspiracy, you will take into consideration the relation of the parties to one another, their personal and business association with each other, and all the facts in evidence that tend to show what transpired between them at and before the time of the alleged combination, as well as the acts performed by each party subsequent to such alleged combination in respect to the subject-matter of the alleged conspiracy."

Conspiracy, Gentlemen, is rarely, if ever, proved by positive testimony. "When a crime is about to be committed by a combination of individuals, they do not act openly, [481] but covertly and secretly. The purpose of the combination is known only to those who enter into it, and their guilt can generally be proved only by circumstantial evidence. The common design is of the essence of the charge, and this may be made to appear when the defendants steadily pursue the same object, whether acting separately or together by common or different means, all leading to the same unlawful result.

"To constitute the offense of conspiracy which is made punishable by the statute, there must be not only the conspiring together by the parties, but the formation of the conspiracy must be followed by an

act done by one or more of the parties to the conspiracy to effect its object. So, if you should find that the defendants, or some of them, conspired together, as charged in the indictment, to commit the offense, you will then inquire whether the defendants, or either of them did any of the acts charged in the indictment as constituting acts to effect the object of the conspiracy.

"The act must be one, you will observe, to effect the object of the conspiracy. It must not be one of a series of acts constituting the agreement, or the conspiring together, but it must be a subsequent, independent act, following a completed agreement, and done to carry into effect the object of the combination. Such acts constitute what are known as overt acts in the law of conspiracy.

"If you find that a conspiracy existed, as alleged in the indictment, and that some one or more of the overt acts were committed, as alleged, the question then follows: Were the defendants on trial, or some of them, connected with that conspiracy as parties thereto? Mere passive knowledge of [482] the illegal action of others is not sufficient to show complicity in the conspiracy. Some active participation is necessary. Co-operation in some form must be shown. There must be intentional participation in the transaction, with a view to the furtherance of the common design and purpose. To establish the connection of either of the defendants with the conspiracy, such connection must be shown by facts or circumstances, independent of the declarations of others; that is, by his own acts, conduct

or declarations. And, until this fact is thus established, he is not bound by the declarations or statements of others. The principal of law and rule of evidence is that when once a conspiracy or combination is established, and a defendant is shown by independent evidence to be a party thereto, then he is bound by the acts, declarations and statements of his coconspirators done and made in furtherance of the conspiracy."

That applies only, Gentlemen, to acts or declarations made during the continuance of the conspiracy. And any act or declaration done or made by any one of the conspirators after it is ended is binding upon himself and not upon the others.

Now, with that long definition of what constitutes a conspiracy, Gentlemen, what is the nature and gist of the charge here.

The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various [483] vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the "Quadra"

loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose however for that ship to come as close as she dared to the Coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment.

There was a large amount of evidence presented here in this case at the beginning of it bearing upon the question as to where the ship "Quadra" was at the time that she was seized; that is to say, whether or not the ship was within the one hour steaming which is the distance the government of Great Britain has consented that her ships might be examined and [484] seized if they carry contraband. All of that evidence, Gentlemen, was admitted here for the information of the Court and the

Court alone so that the Court might determine the question of law as to whether or not the liquor which is alleged to have been seized upon the "Quadra" was properly admissible in evidence; and furthermore whether or not this court had jurisdiction of the crime charged and its subject matter, and likewise, of these men who are all citizens of a foreign government and were sailing under a foreign flag. The Court has determined that matter and it is therefore not before you in any manner at all. The evidence in regard to that you are to dismiss from your minds except for one very narrow purpose which I will hereafter endeavor to describe to you.

Now first, Gentlemen, as to the captain of the ship "Quadra"; If you find from the evidence, Gentlemen, that Captain Ford took command of the steamer "Quadra," loaded her with intoxicating liquor, sailed her to the neighborhood of our shore and there proceeded to cause the liquor to be disembarked from her hold into the small vessels and brought to the coast of California, and if you find at the same time that he did that in conjunction with or in understanding with any person whomsoever then you must find him guilty of the crime as charged.

It makes no difference, Gentlemen, so far as Captain Ford is concerned whether or not he believed that it was legal or illegal to deliver liquor from the sides of his ship into the small boats for delivery here. The Court holds that it was illegal. Therefore whether he knew it, or not, is of no consequence.

So far as the first and second officers and members of the crew are concerned, however, Gentlemen, the situation is [485] somewhat different. If you believe from all of the evidence that either Mr. Harris or Mr. Evelyn or the members of the crew embarked upon that ship at Vancouver with knowledge that her shipping articles and her manifest were but a blind to cover an illegal purpose, and that while they shipped for a voyage to Mexico and back that as a matter of fact they knew they were to come opposite the Golden Gate and there hove to and deliver the liquor to our shores, they or any of them then that you may find knew that are guilty. If, however, you believe from the evidence that either the first or second officer or the members of the crew at the time they shipped and at the time the vessel left Vancouver believed that her manifest and her articles were really her purpose, and that she really intended to go to Mexico and return, then the next thing for you to consider is whether or not subsequently they acquired knowledge of the fact that she was engaged in the business of landnig liquor here contrary to our laws. But even if you should find that they were without knowledge of her purpose at the time she left but that subsequent thereto they discovered her illegal purpose that would not be sufficient to convict the officers and the members of the crew—outside of the captain—unless you also find that they had actual knowledge that the thing that she was actually doing was illegal. What I mean by that is this, Gentlemen: The first and second mate

are bound to obey the lawful orders of the master of the ship; the members of the crew are bound to obey the lawful orders of the captain of the ship, and they are bound likewise to obey the lawful orders of the first officer, or failing him on watch, the second officer. They are bound, Gentlemen, even to obey an unlawful order of the master and officers of the vessel unless they know that it [486] is unlawful. Mere suspicion that the captain or the mates are telling them to do something that is contrary to the law is not sufficient; they are bound to obedience unless they know that what they are doing is unlawful and therefore wrong. To sum up then in regard to the officers, other than the captain, and the screw, if you find, of course, that they knew the purpose of the ship when she sailed then you must find them guilty; but if you believe that they did not know the purpose when she sailed then you must determine the two questions, whether or not they subsequently found out her purpose was unlawful, and that they knew that it was unlawful.

Now as to the two men who were on the "C–55," Messrs. McKenzie and Pensotti: Whether you believe from the evidence that those men were taking liquor from the "Quadra," for delivery on shore, or whether you believe that they were merely transporting the liquor from one ship to another would make no difference provided you find that McKenzie and Pensotti knowingly assisted either the "Malahat" or the "Quadra" either in the transfer of liquor or the delivery here; in other

words, if you find that the "C-55" was out there for the purpose of bringing liquor in then I instruct you that they were assisting in the breaking of the law and that if they did assist in taking the liquor from the "Quadra" and bringing it in they were guilty of a conspiracy so to do. But if you find that they were merely moving liquor from one ship to another then you must find, in addition, that they knew that the purpose of those ships, or one of them, was to illegally land liquor upon the shores of California.

Messrs. Neilsen and Allen, defendants who were arrested on the boat "903–B": Evidence has been presented to you that the night before the "Quadra" was seized the "903–B" was [487] likewise seized, that she had aboard her certain cargo of liquor. If you should find from the evidence that the "903–B" procured that liquor from the "Quadra" or the "Malahat," or if you should find from the evidence that they procured it anywhere else, such as has been suggested, from the shores of Drakes Bay, knowing it to have been brought from either the "Malahat" or the "Quadra" then I instruct you that they likewise are guilty of this conspiracy. On the contrary, if you find from the evidence that they procured that liquor somewhere else then of course you must find them not guilty.

The Government charges, in effect, that the defendant Vincent Quartararo was in charge of the landing of the liquor which was brought down here by these various steamers. The Government charges

that it was Quartararo who engaged at least one of the boats to go out and bring the liquor in; likewise at least one of the boats to take out sacks in which to place liquor when taken from the cases. It is for you, Gentlemen, to determine from all the evidence whether or not that be true. If it be true and you so find that Mr. Quartararo was in charge or had anything to do knowingly with the engaging of boats or the landing of liquor, then he is guilty of a conspiracy and you must find him guilty accordingly.

Some of the evidence against the defendant Quartararo came from the lips of two men who have pleaded guilty here in this very case. If you should find that a conspiracy existed then I instruct you that the two Crivellos were co-conspirators, and while it is a rule of the United States that a man can be convicted upon the testimony of an accomplice alone yet it is equally a well settled rule that the testimony of an accomplice must be viewed with caution and subjected to a closer and more minute scrutiny than the testimony of other witnesses. [488] Therefore, of course, if you believe the testimony of the Crivellos, or either of them perhaps, then you may give it such weight as you think it may have bearing upon the question of the guilt or innocence of Mr. Quartararo and Mr. Belanger. In determining the question as to whether or not you will give credence to the testimony of the Crivellos you should apply, in addition to the instruction I have given you regarding accomplices, the usual tests of their manner, their

appearance, their interest in the outcome of the case, and so forth, and likewise whether or not in your opinion they have been successfully contradicted by the testimony of other witnesses; or if, on the contrary, in your opinion they have been corroborated by the other evidence in the case. All of that, Gentlemen, is for you to determine.

The Government has presented and the Court has allowed in evidence here certain dollar bills. There is evidence here of an expert on the subject of handwriting who testifies that some of the writing at least on the back of those bills is in the handwriting of the defendant Quartararo. You must weigh the evidence of an expert in the same manner that you would the evidence of any other witness, bearing in mind, however, that the purpose of expert testimony, as a great judge once said, was to afford a jury light upon a subject which is not commonly known or familiar to those persons who have not made the matter a subject of study or investigation. Therefore in determining whether or not you believe that Mr. Quartararo wrote the list of liquor upon the backs of the bills here you will weigh the testimony of Mr. Heinrich in the light of what seems to you to have been his qualifications and in the light likewise of the reasons that he gave for his opinion, and whether or not that evidence is consistent with [489] the other evidence in the case.

Now, Gentlemen, if you find that Mr. Belanger had to do with the plans for sacking and landing this liquor as testified by the Crivellos then I in-

struct you that that would constitute him likewise a conspirator in the case.

Something likewise has been said here to the effect that the two Crivellos are admittedly guilty of felonies. Under our system of law a man who has been convicted of a felony, or has pleaded guilty to it, can testify. Evidence in regard to his having been convicted or pleaded guilty to a felony is admitted solely as bearing upon the question of his credibility. If in spite of the fact that they have pleaded guilty to the conspiracy charged here you believe that they, or either of them, are or is entitled to full credence then you will determine whether or not their testimony is in accordance with the other evidence in the case.

Finally, Gentlemen, something has been said here about these men on the "Quadra,"—the captain, the officers and the crew—having violated the laws of their own country. It was in evidence here that they had transshipped this liquor to these small boats for landing upon this coast. Now, Gentlemen, these men are not charged with the violation of the laws of Canada, as of course they could not be in this court; neither are they charged with having conspired to violate those laws. So that the fact that they may have committed a crime against the laws of Canada by delivering this liquor contrary to their manifest and shipping articles is to be considered by you only for one narrow point, and that is as bearing upon the question as to whether or not these defendants, that is, the captain and the crew of the

"Quadra," had any knowledge that they were doing an act which [490] was unlawful under the laws of the United States.

The landing of liquor, Gentlemen, in the manner that has been testified to here is a crime against our laws. The mere fact, if it be a fact, that the liquor was delivered upon the high seas to small boats for delivery here renders it none the less a crime subject to the jurisdiction of our courts, the determination of our juries' final judgment and sentence. Therefore as you have been instructed before, if any of these defendants whom you may find knowingly participated in that crime, if you find that there was such a crime, and likewise find that there were acts done in pursuance of that understanding or agreement, then such defendants as participated in it and were parties to it, in your sober judgment are guilty here.

Gentlemen, I cannot forebear a final word. There was a great Frenchman came to these shores a great many years ago and wrote a book that he called "Democracy in America." One of the most pregnant sentences of his final judgment after a survey of all of our institutions was that the final fruit and flower of civilization is to get twelve men in a jury-box. The Court and the Government, Gentlemen, look to you. You are the defense of the Government to see that its laws be not violated; you are likewise the shield and buckler for the defendants to see that they be not unjustly accused, or, if they be unjustly accused

that they be not wrongfully convicted. And as between those two you are to determine the question soberly, calmly, with no prejudice or feeling of sympathy, and with no feeling of rigor toward these men.

It requires, Gentlemen, a unanimous verdict at your hands, I should state to you, Gentlemen, that when you take the indictment into the jury-room you will find that the captain [491] and crew of the "Quadra" are the first 23 men named in the indictment.

Mr. GREEN.—With the exception of one man, McLennan, who is not on trial to-day.

The COURT.—Oh, yes, Mr. Green, that is correct. The defendant McLennan is not on trial. Do I make that clear to you, gentlemen? Captain Ford, First Officer Harris, Second Officer Evelyn and the next 20 are members of the crew. "C–55"; McKenzie and Penosotti: "903–B"; Neilsen and Allen. I think that covers them all.

Any exceptions, Gentlemen?

Mr. FAULKNER.—I know the jury will indulge me and your Honor, too. We except to the failure on the part of the Court to give the instructions proposed and numbered 1 to 1–V.

We also except to the failure of the Court to give the instructions numbered 33 to 72, inclusive, except instruction No. 48.

We except to the giving of the instruction by the Court in which you start the instruction by stating: The charge under which these men are accused, and ending your instruction by saying, in

substance: This is the charge in the indictment. I understood the Court's instruction to be that the men were charged in the indictment with certain acts, which the Court recounted, that a corporation was formed—

The COURT.—You do not have to specify it, Mr. Faulkner.

Mr. FAULKNER.—The next is the instruction in reference to the position of the ship.

The next is the instruction of the Court dealing with the officers, members of the crew, and the captain, in which you stated that if they had the actual knowledge prior to embarkation of the acts that were thereafter committed that the [492] verdict should be guilty. I except to that, in conformity with our known position with regard to the law, which position we have heretofore announced.

I think that the instructions proposed cover fully the position we have taken on the question of the three-mile limit; we except to the Court's failure to give that instruction.

The COURT.—Yes, I think they cover it very fully.

Mr. COGHLAN.—Your Honor will permit me to except to the refusal of the Court to give that instruction which affects and relates to Exhibit 30 to and inclusive of Exhibit 37; they are with relation to those bills. Your Honor remembers the instructions which requested the withdrawal of those matters from the attention of the jury. And also the testimony of the expert witness as

laying thereon, and such other matters that affected it. Your Honor will allow me to reserve exception in that regard.

The COURT.—I think, Gentlemen, that I omitted one instruction that I should have given. I will give it now.

If you find that a witness has wilfully sworn falsely as to any material fact you may distrust his testimony as to everything else he has testified to.

Mr. FAULKNER.—Then I withdraw the exception on that particular instruction.

Mr. COGHLAN.—I think I have no further exceptions.

Mr. HENNESSY.—May it please the Court: On behalf of Allen and Neilsen I desire to except to your Honor's failure to give the 4th instruction requested on their behalf; also the 5th instruction requested on their behalf; also the 7th instruction requested on their behalf; also the 8th instruction requested on their behalf; also the 10th instruction [493] requested on their behalf; also the 11th instruction requested on their behalf. And also the following instruction which your Honor gave the jury: If you find that the "903-B" procured that liquor from the "Quadra," or the "Malahat," or if you find from the evidence that they procured it from any other place, knowing it had been brought from the "Malahat," or "Quadra," then I instruct you to find these defendants guilty. I would like to except to that instruction.

Mr. O'CONNOR.—On behalf of the defendants Pensotti and McKenzie *I desire to except to the* failure of the Court to give instructions 1 to 9 inclusive, and instruction 10, 12, 14, 16, 17, 19, 20, 21, 24, 25, 26, 28, 31, 32 and 33 as requested.

The COURT.—You may retire, Gentlemen. [494]

(Thereupon, at 3:55 P. M., the jury retired to deliberate upon its verdict and subsequently, at 9:00 P. M., the jury returned into court and found a verdict of guilty as to the following defendants on trial: Captain Ford, First Officer Harris, Second Officer Evelyn, Chief Engineer Mason; McKenzie, Pensotti, Allen, Neilsen, Quartararo, Belanger; and a verdict of not guilty as to the other defendants on trial.)

DEFENDANTS' REQUESTED INSTRUCTIONS.

THE DEFENDANTS GEORGE FORD, GEORGE HARRIS, J. EVELYN, AND CHARLES H. BELANGER, REQUESTED THE COURT TO GIVE THE FOLLOWING INSTRUCTIONS, WHICH WERE SUBMITTED TO THE COURT AND REFUSED BY IT, TO WIT: INSTRUCTION No. 1, No. 1a, No. 1b and No. 1v.

Instruction No. 1 was in the words following:

I instruct you that the evidence in this case is insufficient to warrant a conviction of the defendant George Ford, and you are therefore instructed

to return a verdict of not guilty as to the defendant George Ford.

Instruction No. 1a, Instruction No. 1b, and Instruction No. 1v were in the same form as Instruction No. 1, except that the names of the defendants George Harris, J. Evelyn, and Charles H. Belanger were substituted in the proposed instruction by them in place of the name George Ford appearing above.

INSTRUCTION No. 33.

I charge you that the steamer "Quadra" was a private vessel under the British flag.

INSTRUCTION No. 34.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its [495] territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendants, master, officers and members of the crew of the steamer "Quadra" shall be not guilty.

INSTRUCTION. No. 35.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers, and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case against defendant Belanger shall be not guilty.

INSTRUCTION. No. 36.

I charge you that if you believe from the evidence in this case that the steamer "Quadra" never came within a marine league or three miles from the coast line of the United States its territories or possessions, then your verdict as to the master, subordinate officers and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 57.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the master, subordinate officers and members of the crew of the steamer "Quadra" came within three miles or a marine league of the coast of the United States its territories and possessions at or during the time of the existence of the claimed conspiracy then your verdict as to each of said officers, members of the crew and master shall be not guilty.

INSTRUCTION No. 38.

There is no evidence in this case that the "Quadra" was a vessel intended to bring liquor into the United States. [496]

INSTRUCTION No. 39.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra"

to the United States, then your verdict as to the master, officers and members of the crew of the "Quadra" and each thereof shall be not guilty.

INSTRUCTION No. 40.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then your verdict as to defendant Belanger shall be not guilty.

INSTRUCTION No. 41.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed and you are to disregard the same as to the officers, members and master of the "Quadra."

INSTRUCTION No. 42.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that [497] the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories

or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed, and you are to disregard the same as to the defendant Belanger.

INSTRUCTION No. 43.

I charge you that in order to find the master, officers and members of the crew of the steamer "Quadra" guilty, the Government must show to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" at the time of its seizure was within an hour's sailing distance of some vessel other than the "Quadra," which was intended to convey liquor to the United States, its territories and possessions.

The burden therefore rests upon the Government to establish to a moral certainty and beyond a reasonable doubt that the "C–55" was a vessel intended to convey liquor from the "Quadra" to the United States, its territories or possessions; the Government must further establish to a moral certainty and beyond a reasonable doubt that the "C–55" could have traversed the distance between the place of seizure of the "Quadra" to the North Farallone in one hour, laden as it was and having in mind the water to be traversed and the condition of wind, weather and current.

INSTRUCTION. No. 44.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor

from one ship to another on the high seas, your verdict as to the defendants masters and members of the crew of the "Quadra" shall be not guilty. [498]

INSTRUCTION No. 45.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one ship to another on the high seas, your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 46.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the master, officers and members of the "Quadra" shall be not guilty.

INSTRUCTION No. 47.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Faralione, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 48.

I charge you that under the law, the officers subordinate to master and members of the crew of the "Quadra" were bound to obey the lawful commands of the master of said vessel.

INSTRUCTION No. 49.

There is evidence in this case that the "Quadra" delivered liquor to other vessels. I charge you that you cannot infer from this evidence that all of the officers and members of the [499] crew of the "Quadra" participated in such delivery. The burden rested upon the Government in this case to prove to a moral certainty and beyond a reasonable doubt as to each officer and as to each member of the crew that they participated in a conspiracy with knowledge thereof.

INSTRUCTION No. 50.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the acts done and performed by the members of the crew and subordinate officers of the master of the "Quadra," were done and performed with an intent to violate the laws of the United States as distinguished from obedience to the orders of the master of the "Quadra," your verdict as to the members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 51.

I charge you that in order to find the subordinate officers and members of the crew of the "Quadra" guilty of the offense charged in the indictment, the

Government must establish to a moral certainty and beyond a reasonable doubt that each subordinate officer and member of the crew that you find guilty actually participated in an attempt to violate the laws of the United States with knowledge at the time of participation that the laws of the United States were attempted to be violated.

INSTRUCTION No. 52.

I charge you that each member of the crew and in this case that all acts done and performed by the officers subordinate to the master and members of the crew of the "Quadra" were done and performed by them at a point greater than three miles or a marine league from the coast of the United States, its territories or possessions, your verdict as to said members of the crew and each thereof and said subordinate officers and each [500] thereof shall be not guilty.

INSTRUCTION No. 53.

I charge you that the proof that certain of the defendants were officers and members of the crew of the "Quadra" is not, standing alone, sufficient to warrant a conviction of said defendants or either of them.

INSTRUCTION No. 54.

I charge you that each member of the crew and each officer of the "Quadra" is entitled to have the evidence against him weighed and determined under the rules laid down by the instructions given and to be given by the Court.

INSTRUCTION No. 55.

With respect to the officers and members of the crew of the "Quadra" and each thereof, I charge you that participation in an act a part of a conspiracy, without knowledge of its existence, or knowledge of the conspiracy without participation therein, is not sufficient to warrant a conviction.

INSTRUCTION No. 56.

I charge you that if you find from the evidence in this case that any defendants members of the crew and officers subordinate to the master of the "Quadra" participated in delivering and unloading liquor from the steamer "Quadra," to other vessels pursuant to the orders of the master at a point more than a marine league or three miles from the United States, its territories or possession, and said members of officers and crew or either of them, did not have knowledge that said "Quadra" was within an hour's sailing distance of the vessels with which it was dealing from the coast line of the United States, its territories or possessions, and did not have an intent to violate any law of the United States, I charge you that your verdict as to such officers and members of the crew and each thereof shall be not guilty. [501]

INSTRUCTION No. 57.

I have instructed you as to the facts which the Government must establish as to a moral certainty and beyond a reasonable doubt in order to find the members of the crew and officers of the steamer "Quadra" guilty. I further charge you in this con-

nection that every fact which I have instructed you that you must find, you must find as to each member of the crew and as to each officer of the steamer "Quadra."

INSTRUCTION No. 58.

I charge you that the only evidence in this case connecting defendant Belanger with the commission of the offense charged is the testimony of accomplices.

INSTRUCTION No. 59.

I charge you that you should exercise care and caution in viewing the testimony of accomplices and that before a conviction be based thereon, such testimony should be convincing proof of the guilt of the accused.

INSTRUCTION No. 60.

In considering the testimony of accomplices I caution you about accepting such evidence without material corroboration, coming as it does from a polluted source.

INSTRUCTION No. 61.

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point.

INSTRUCTION No. 64.

I charge you that unless you find from the evidence that the subordinate officers and members of the crew of the "Quadra," at the time of the signing of the ship's articles or before the actual embarkation of the "Quadra" on the voyage indicated

[502] in the evidence, had knowledge that it was the purpose of the voyage to unload the cargo contained in the "Quadra" at a place other than its apparent designation, your verdict as to each of said subordinate officers and members of the crew of the "Quadra," shall be not guilty.

INSTRUCTION No. 65.

I charge you that if the acts and conduct of the master, subordinate officers and members of the crew of the "Quadra," or as to them or either of them, as consistent with their innocence of the offense charged in the indictment as with their guilt, then it is your bounden duty to acquit said defendants and all of them, or either of them, as to whom you shall so find.

INSTRUCTION No. 66.

I charge you that if the acts and conduct of the defendant Belanger depicted in the record is as consistent with the innocence of said defendant Belanger, as to the offense charged in the indictment as with his guilt, it is your duty to acquit the said defendant Belanger.

INSTRUCTION No. 67.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra" were not conscious participants in this alleged conspiracy, if it was a conspiracy, then you must return a verdict of not guilty as to said subordinate officers and members of the crew of the "Quadra."

INSTRUCTION No. 68.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra," acting in good faith, supposed that the "Quadra" was going to Mexico and not to this country, then they ought not [503] to be convicted.

INSTRUCTION No. 69.

I charge you that the subordinate officers and members of the crew of the "Quadra" were mere servants or employees of the boat and that their acts should be considered by this jury, keeping that fact in view, and if you do not believe beyond a reasonable doubt, that they were conscious participants in the conspiracy, if there was one, then you ought to acquit them.

INSTRUCTION No. 70.

If you find from the evidence that the acts or any one of them charged by the Government in the indictment, or shown by the evidence, to have been committed by the defendants comprising the subordinate officers and members of the crew of the "Quadra" were committed by said defendant and were so committed and performed by said defendants, solely and simply as employees, servants, or agents of other persons and were performed by said subordinate officers and members of the crew without any common design, purpose or understanding on the part of said subordinate officers and members of the crew with any other persons charged in said indictment, then I instruct you that the said

defendants, subordinate officers and members of the crew of the "Quadra," cannot be considered conspirators and must be acquitted.

INSTRUCTION No. 71.

I charge you that where it is within the power of a party to produce a witness and such a witness is not produced, a presumption arises that the testimony of such witness not produced but available would be adverse to the party failing to produce the witness.

INSTRUCTION No. 72.

If you believe from the evidence in this case that defendant [504] Ford, master of the "Quadra" delivered liquor to other persons with the belief at the time that the delivery by him and that all of his acts and conduct in connection therewith were without intent on his part to violate any law of the United States, and that he was of the belief that his acts and conduct were legal at the time of the performance by him, then I instruct you that as to said defendant Ford, Master of the "Quadra," your verdict shall be "not guilty."

The failure of the Court to give said instructions and each of them by said defendants and each of them was duly excepted to.

DEFENDANT VINCENT QUARTARARO REQUESTED THE COURT TO GIVE HIS INSTRUCTIONS NUMBERED AS HEREINAFTER INDICATED, WHICH WERE SUBMITTED TO THE COURT AND THE GIVING OF WHICH WERE BY THE COURT REFUSED:

INSTRUCTION X.

The Court instructs the Jury that Exhibits 30, 31, 32, 33, 34, 35, 36, 37, which consist of certain dollar bills heretofore allowed in evidence are in no way to be considered in this case, and that the same are to be entirely ignored in arriving at a verdict in this case. You also are instructed to disregard utterly Government's Exhibits 38, 39, 40, 41, 42 and 43, which contain certain exemplars of handwriting.

Furthermore you are instructed to utterly disregard and refrain from the consideration of the testimony of E. O. Heinrich in so far as it touches said or any of said exhibits.

INSTRUCTION A.

You are instructed that if from the evidence you are convinced beyond a reasonable doubt that any one or more of these defendants knew of the existence of the conspiracy charged in the indictment and yet you entertain a reasonable doubt as to whether such defendant or defendants took part in said conspiracy, you must find such defendant or defendants not guilty. [505]

INSTRUCTION B.

You are instructed that the mere fact that certain of these defendants were or may have been acquainted with each other or may have associated together is not in itself sufficient upon which to find a verdict against them or any of them.

INSTRUCTION C.

You are instructed that you cannot convict any of these defendants merely because the evidence in this case may convince (if it should convince) you that the defendants, or some of them are guilty of a conspiracy, other than the one charged in the indictment.

INSTRUCTION E.

The Court instructs the jury, that you are not in this case trying these defendants for the violation of the "National Prohibition Act," nor are you trying them for an infraction of law of the United States known as the "Tariff Act of 1922." You are sworn, to the contrary, to try these defendants solely upon the charge of conspiracy, as alleged in the indictment. And in this connection you are instructed that unless you are convinced beyond any reasonable doubt that the defendants or some of them are guilty of the particular conspiracy to which the indictment refers—you cannot find them guilty even though you may be convinced beyond a reasonable doubt that they are guilty of another or any number of other crimes. [506]

INSTRUCTION F.

You are instructed that even though you believe from the evidence that the conspiracy charged in the indictment existed as therein alleged, and are convinced that some one of the defendants in violation of the National Prohibition Act purchased from some one or more members of such conspiracy and transported the same—certain intoxicating liquor —yet if you entertain a reasonable doubt as to whether such defendant took part in said conspiracy —you must find him not guilty.

INSTRUCTION G.

You are instructed that it is the law by which you are sworn to abide, that if after reviewing all of the facts that have been adduced at this trial you discover that there are two possible interpretations of these facts, the one of which is entirely consistent with the guilt of the defendant and the other of which is consistent with his innocence, it then becomes your bounden duty to lay that interpretation upon the facts which is consistent with the innocence of the defendant, and accordingly find him not guilty.

INSTRUCTION H.

I instruct you that it is the law that a defendant, when accused of crime, has a perfect right to stand mute, and that the law draws no adverse imputation from such conduct.

INSTRUCTION I.

I instruct you that it is the law that the degree of

proof necessary to establish the guilt of the defendant is more or greater than the degree of proof sufficient to acquit him. In the first instance,the Government must prove to a moral certainty and beyond a reasonable doubt that the defendant is guilty of the offense charged, before you can convict him. In the case of the defendant, however, the degree of proof required [507] on his part is merely such as to raise in your minds a reasonable doubt as to his guilt, and in that case it is your duty to acquit him.

INSTRUCTION J.

The Court instructs the jury that the prosecution in this case having offered the testimony of two persons, namely, Sam Crivello and Marina Crivello, who have pleaded guilty to the crime set forth in the indictment, you are to review the testimony of these two persons with caution and to weigh their testimony in the light of the fact that they are here testifying as admitted accomplices. You ought not in other words to give the same degree of credit to the testimony of such witnesses as you would to the testimony of witnesses who are not accomplices and who have not been impeached. I further charge you in this connection, that if you believe after a careful review of their testimony that the accomplices named have wilfully testified falsely to any material fact in this case you may absolutely discard and disregard their testimony.

INSTRUCTION K.

The Court instructs the jury that certain testi-

mony has been offered here by the Government to the effect that one of these defendants, Vincent Quartararo, was present and received from the witness Sam Crivello certain deliveries of illicit liquor at certain times and places. In this connection the said defendant has offered testimony having for its purpose proof that he was not present at the times and places referred to by said witness. In this connection I charge you that if such testimony, or any other evidence which has been here adduced, raises in your mind a reasonable doubt as to whether Vincent Quartararo was present at said times and places it becomes your duty to resolve that doubt favorably to the defendant Vincent Quartararo. [508]

INSTRUCTION L.

You are instructed that it is the duty and sole province of the jury to say whether or not any fact has been proven or not proven and no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION M.

You are instructed that all questions concerning the identify of handwriting are to be decided exclusively by the jury. You are not bound to follow the opinion of any expert witness if your opinion runs counter to that of such expert witness. All questions affecting similarity or dissimilarity of handwriting are to be finally decided by you and by no one else.

INSTRUCTION N.

The Court instructs the jury that it is the positive right and privilege of anyone of the defendants here on trial to either take the witness-stand or to refrain from testifying in this case, and as to any defendant who may not have taken the witness-stand, I charge you that the fact that he has not offered himself as a witness is not to be considered by you in any respect in arriving at a verdict in this case. Nor are you to draw any inference adverse to or against any such defendant by reason of the fact that he may not have taken the witness-stand in this case.

INSTRUCTION O.

You are instructed that it is the bounden duty of the prosecution to prove every essential and material fact in this case by more than a preponderance or greater weight of testimony. In a civil case it is only necessary that a fact on either side be established by a mere preponderance or greater weight of evidence, but in a criminal case it is the law that the prosecution must actually prove every material fact to the entire satisfaction of the [509] jury beyond any reasonable doubt. On the other hand, if you find that the defense in this case has offered evidence of any facts having a tendency to disprove facts advanced by the prosecution, or having a tendency to establish the innocence of the defendant, it is not necessary that the defense prove any facts beyond a reasonable doubt. It is only

necessary in any case that the evidence advanced by the defense raise in the mind of the jury or any juror a reasonable doubt and in no case is it necessary that the defendants prove a fact by more than a mere preponderance or greater weight of the testimony.

INSTRUCTION P.

You are further instructed that you cannot convict any of the defendants upon a mere suspicion or upon the mere fact that the probability of their guilt may be greater than the probability of their innocence. The prosecution are bound to establish their guilt beyond all reasonable doubt, and unless they do so you cannot convict them, however strong a suspicion of their guilt you may have in your mind, or however probable their guilt may seem, but it is your duty, under such circumstances to find them not guilty.

INSTRUCTION Q.

You are instructed that the jury in this case are the sole judges of the facts here offered and you alone are the judges of the credibility of the witnesses who may have testified here. It is your privilege and duty under the law in weighing and considering the credibility of such witnesses to observe and note their conduct upon the witness-stand, the manner in which they have testified and deported themselves, whether or not they are persons who entertain any animus or feeling towards or against the defendants and whether or not their testimony is in any

way influenced or colored by any feeling which they may entertain in this case or any interest they may have in the result thereof. [510] If you believe upon hearing the testimony of any of the witnesses that his evidence has been influenced or colored by anything except a desire to testify to the truth, it is your duty to judge of his testimony accordingly and to give it such weight as you deem the testimony of an interested person to be entitled to in this case.

INSTRUCTION R.

The Court instructs the jury that it is the law, by which we are bound in this proceeding, that you and you alone are the judges of the facts in this case, and, that your conscientious conclusions upon the facts together with the law wherever you find it applicable to such facts, must alone guide you in arriving at a verdict.

INSTRUCTION S.

You are instructed that it is for you to say whether any fact has been proven or not proven. And no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION T.

You are instructed that the testimony of expert witness is to be received by you with great caution.

INSTRUCTION U.

You are instructed that the mere fact that a defendant may have been in a position where he had

an opportunity to commit the offense which is here charged against him is not sufficient upon which to find a verdict against him.

INSTRUCTION V.

You are instructed that it is your privilege and duty in weighing the testimony of the witnesses to ascertain for yourselves how much credit should be given to statements made by each and every witness and if you find that any witness has [511] wilfully testified falsely as to any one material matter, you may distrust and discard all of the testimony of that witness.

Said defendant Vincent Quartararo duly and regularly excepted to the failure of the Court to give said instructions and each of them. [512]

Thereupon the attorneys for defendants George Ford, George Harris and J. Evelyn presented to the Court a motion for new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [513]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL.

Now come the defendants George Ford, George Harris and J. Evelyn, in the above-entitled action, and jointly and severally move the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against these moving defendants, or either of them.
6. That the Court erred in denying the motion of these defendants, and each of them, to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendants, property, information and writing seized from the steamer "Quadra," said objection being made upon [514] the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against these defendants, and each of them, over their objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence testimony as to the speed of the "C–55," and to which ruling defendants duly excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of these moving defendants, and each of them.

9. That said Court had no jurisdiction of the persons of these defendants, or either of them.

10. That the Court erred in denying the motion of defendants to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendants George Ford, George Harris & J. Evelyn. [515]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

Now come the defendants George Ford, George Harris and J. Evelyn and move to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of these defendants or of the offense claimed against them.

2. That the Court has no jurisdiction of the persons of these moving defendants, or either of them.

3. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against these moving defendants, or either of them.

4. That the indictment in said action does not show, nor attempt to show, what offense these moving de-

fendants, or either of them, are claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any wise indicating the law concerning which the importation is contrary to.

5. That the Court is without power, under the treaty of [516] May, 1924, between the United States and Great Britain, to impose sentence or judgment upon these moving defendants.

6. That the Court is without power to punish the acts and conduct of these moving defendants, or either of them.

7. That all acts, transactions, and conduct of these moving defendants occurred beyond the territorial jurisdiction of the United States.

8. That Sec. 37 of the Criminal Code has no application beyond the territorial limits of the United States.

9. That the Tariff Act of 1922 and the National Prohibition Act have not, nor has either of them, application beyond the territorial limits of the United States.

10. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

11. No overt act set forth in the indictment was proven.

12. No overt act was shown to have been committed pursuant to alleged conspiracy.

13. No conspiracy was shown.

WHEREFORE, defendants, and each of them, pray that judgment be arrested.

Dated: This 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,

Attorneys for Defendants George Ford, George Harris and J. Evelyn. [517]

Said motion for a new trial and said motion in arrest of judgment was duly argued on behalf of said defendants and was thereupon submitted to the Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorneys for the defendants then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant George Ford should be imprisoned for two years in the penitentiary and that he pay a fine of One Thousand Dollars; that said defendant George Harris be imprisoned in the penitentiary for a period of thirteen months; and that defendant J. Evelyn be imprisoned for ten months in the county jail.

Thereupon the attorneys for the defendant Charles Horace Belanger presented to the Court, in behalf of said defendant, a motion for a new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [518]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.
6. That the Court erred in denying the motion of this defendant to suppress the evidence made prior to the trial.

7. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of [519] the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant over his objection would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

8. That said Court had no jurisdiction of the subject matter of the acts and conduct of this moving defendant.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants and closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

12. That the Court erred in admitting in evidence certain currency and bills over the objection of defendant.

13. That the Court erred in admitting in evi-

dence transactions of defendant and other witnesses with ships other than the "Quadra."

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[520]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (CHARLES HORACE BELANGER).

Now comes the defendant Charles Horace Belanger and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in anywise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty between the United States and Great Britain, to impose any punishment upon this moving defendant. [521]

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated: this 3d day of April, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

[522]

Said motion for new trial and said motion in arrest of judgment was duly argued on behalf of said defendant and was thereupon submitted to the

Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorneys for the defendant then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant, Charles Horace Belanger, be imprisoned in the penitentiary for a term of two years and that he pay a fine in the sum of Ten Thousand Dollars.

Thereupon the attorney for the defendant Vincent Quartararo presented to the Court, in behalf of said defendant, a motion for a new trial and a motion in arrest of judgment, which said motions were and are in the words and figures following, to wit: [523]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION FOR NEW TRIAL (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo, in the above-entitled action, and moves the Court to set aside and vacate the verdict heretofore rendered herein, on the following grounds:

1. That the verdict is against the law.
2. That the said verdict is against the evidence.
3. That the said verdict is not supported by the evidence.
4. That the Court misdirected the jury in matters of law.
5. That the indictment in said action does not state facts sufficient to constitute a public offense as against this moving defendant.
6. That said Court had no jurisdiction of the subject matter of the said offense.
7. That the Court erred in overruling the demurrer of defendant to the indictment, and to which ruling defendant duly excepted.
8. Errors of law occurring at the trial—in this, to wit: That the Court erred in admitting in evidence, over the objection and exception of the defendant, property, information and writing [524] seized from the steamer "Quadra," said objection being made upon the grounds, among others, that said evidence was in violation of the 4th and 5th Amendments to the Constitution of the United States, and upon the further ground that its use as evidence against this defendant, over his objection,

would be in violation of the 4th and 5th Amendments to the Constitution of the United States. That the Court erred in admitting in evidence, over the objection of the defendant, testimony as to the speed of the vessel "C–55," and to which ruling defendant excepted.

9. That the Court erred in reopening the case of the prosecution after the taking of evidence on behalf of prosecution and defendants and closed.

10. That the Court erred in admitting in evidence the telegram of date June 24, 1924.

11. That the Court erred in admitting in evidence certain bank notes and currency bills, over the objection of defendant.

12. That the Court erred in admitting evidence of claimed transactions of defendant and other witnesses with ships other than the "Quadra."

13. That the Court erred in denying the motion of defendant to quash the indictment in the above-entitled action.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant Vincent Quartararo.

[525]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

Before: Hon. JOHN S. PARTRIDGE, Judge.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

MOTION IN ARREST OF JUDGMENT (VINCENT QUARTARARO).

Now comes the defendant Vincent Quartararo and moves to arrest the judgment on the verdict herein, on the following grounds:

1. That the Court has no jurisdiction of the subject matter of the acts and conduct of the defendant or of the offense claimed against him.

2. That the indictment in said action does not state facts sufficient to constitute cause of action or to state a public offense against this moving defendant.

3. That the indictment in said action does not show, nor attempt to show, what offense this moving defendant is claimed to have committed, and more particularly in this: That said indictment attempts to allege conspiracy to import liquor into the United States contrary to law, without in any-

wise indicating the law concerning which the importation is contrary to.

4. That the Court is without power, under the treaty of May, 1924, between the United States and Great Britain, to impose [526] any punishment upon this moving defendant.

5. That the Court is without power to punish the acts and conduct of this moving defendant.

6. That the conspiracy charged in the indictment never existed within territorial limits of the United States.

7. No overt act set forth in the indictment was proven.

8. No overt act was shown to have been committed pursuant to alleged conspiracy.

9. No conspiracy was shown.

WHEREFORE, defendant prays that judgment be arrested.

Dated: this 3d day of April, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant Vincent Quartararo.

[527]

Said motion for new trial and said motion in arrest of judgment was duly argued on behalf of said defendant and was thereupon submitted to the Court for its decision, and, after due consideration, the Court denied the motion for new trial and denied the motion in arrest of judgment, to which ruling the attorney for the defendant then and there duly and regularly excepted. Thereupon the said Court, as punishment for said offense, determined that said defendant, Vincent Quartararo,

be imprisoned in the penitentiary for a term of two years and that he pay a fine in the sum of Ten Thousand Dollars.

The above bill of exceptions contains all of the evidence, oral and documentary, and all of the proceedings relating to the trial, judgment and conviction, and sentence, motion for new trial, and motion in arrest of judgment of the defendants, and each of them.

It is hereby stipulated and agreed by and between the attorneys for the United States and for the defendants that all exhibits introduced in evidence for identification upon the trial of the above-entitled cause, and now in the custody of the clerk of the court, shall be deemed to be included as a part of the foregoing bill of exceptions, with the same effect in all respects as if incorporated in said bill of exceptions. In the event the said exhibits are not so numbered as to identify the same, they shall be marked by the Court, upon its certification of this bill of exceptions, so as to identify the same.

It is further hereby stipulated and agreed that this bill of exceptions be used as the bill of exceptions for the writ of error sued out by the defendants George Ford, George Harris and J. Evelyn, and the writ of error sued out separately [528] on behalf of defendant Charles Horace Belanger, and the writ of error sued out separately on behalf of the defendant Vincent Quartararo, in the above-entitled cause.

Dated: May 10, 1925.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendants George Ford, George Harris and J. Evelyn.

KENNETH M. GREEN,
H. C. FAULKNER,
Attorneys for Defendant Charles Horace Belanger.

NATHAN C. COGHLAN,
Attorney for Defendant Vincent Quartararo.

STERLING CARR,
U. S. Attorney.

THOS. J. RIORDAN,
Assistant U. S. Attorney. [529]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD et al.,
Defendants.

STIPULATION RE BILL OF EXCEPTIONS AND EXHIBITS.

It is hereby STIPULATED and agreed by and between the parties for the United States of America, and the attorneys for the defendants

herein, that all exhibits introduced in evidence upon the trial of the above-entitled case, and in the custody of the clerk of the court, shall be deemed to be included as a part of the foregoing bill of exceptions.

It is further stipulated that in the event that said exhibits are not so numbered as to identify the same, it shall be marked by the Court upon its certification of this bill of exceptions so as to identify the same.

It is further stipulated that all exhibits introduced in the above-entitled action may be marked by the clerk of the above-entitled court and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

It is further hereby stipulated and agreed that this bill of exceptions may be used as the bill of exceptions for the writ of error sued out separately by the defendant, Charles H. Belanger, on writ of error sued out separately by the defendant, Vincent Quartararo, and the writ of error sued out separately by the defendants, George Ford, George Harris and J. Evelyn. [530]

Dated: May ——, 1925.

STERLING CARR,
United States Attorney.
THOS. J. RIORDAN,
Assistant United States Attorney, Attorneys for United States of America.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Said Defendants.

It is hereby stipulated and agreed by and between the attorneys for the United States and the attorneys for the respective defendants, that the proposed bill of exceptions of said defendants on said writ of error, sued out separately by said defendants, and the proposed amendments of the United States to said bill of exceptions, have been correctly engrossed and have been presented in time, and as engrossed may be approved, allowed and settled by the Judge of the above-entitled court as correct in all respects, and that the same shall be made a part of the record in said case and shall be and is a bill of exceptions upon the writs of error sued out separately by the defendants herein.

Dated: May 10, 1925.

STERLING CARR,
United States Attorney.
THOS. J. RIORDAN,
Assistant United States Attorney, Attorneys for Said United States of America.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
JAMES B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Said Defendants. [531]

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS.

The foregoing bill of exceptions duly proposed and agreed upon by the counsel for the respective parties, is correct in all respects and is hereby ap-

proved, allowed and settled, and made a part of the record herein as per stipulation of the attorneys for the respective parties herein.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [532]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

PETITION FOR WRIT OF ERROR (GEORGE FORD, J. EVELYN AND GEORGE HARRIS).

Now come Geo. Ford, J. Evelyn and Geo. Harris, some of the defendants in the above-entitled action, through their attorneys, Kenneth M. Green, Esq., and Harold C. Faulkner, Esq., and feeling themselves aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and

whereby these defendants are sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment reference is hereby made for greater particularity, your petitioners say that they are advised by counsel, and therefore that they aver, that there was and is a manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioners, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petition this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause, be transmitted by the clerk of [533] this Court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendants, Geo. Ford, J. Evelyn and Geo. Harris, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Said Defendants.

[Endorsed]: Due service and receipt of a copy of within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [534]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

PETITION FOR WRIT OF ERROR (VINCENT QUARTARARO).

Now comes Vincent Quartararo, one of the defendants in the above-entitled action, through his attorney, Nathan C. Coghlan, Esq., and feeling himself aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and

whereby this defendant is sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment reference is hereby made for greater particularity, your petitioner says that he is advised by counsel, and therefore that he avers, that there was and is manifest error in the records and proceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioner, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petitions this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause, be transmitted by the clerk of this court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the [535] pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendant, Vincent Quartararo, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

NATHAN C. COGHLAN,

Attorney for Defendant, Vincent Quartararo.

[Endorsed]: Due service and receipt of a copy of the within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925, Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [536]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

PETITION FOR WRIT OF ERROR (CHARLES H. BELANGER).

Now comes Charles H. Belanger, one of the defendants in the above-entitled action, through his attorneys, Kenneth M. Green, Esq., and Harold C. Faulkner, Esq., and feeling himself aggrieved by the judgment of this Court made and entered April 3d, 1925, wherein and whereby this defendant is sentenced to pay a certain money fine and be imprisoned as set forth in the judgment made and entered by the Court in said cause, to which judgment

reference is hereby made for greater particularity, your petitioner says that he is advised by counsel, and therefore that he avers, that there was and is a manifest error in the records and poceedings had in said cause, and in the making, rendition and entry of said judgment and sentence, to the injury and damage of your petitioner, all of which error may be fully made to appear by an examination of the bill of exceptions and the assignment of errors filed herein and presented herewith.

And hereby petitions this Honorable Court for an allowance of a writ of error herein to the United States Circuit Court of Appeals, in and for the Ninth Circuit, and that a full and complete transcript of the records and proceedings in said cause be transmitted by the clerk of this [537] court to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit; and that, during the pendency of this writ of error, all proceedings had by this Court be sustained, stayed and superseded, and that, during the pendency of said writ of error, the defendant, Charles H. Belanger, be admitted to bail in such sum as to this Court seems meet and proper.

Dated: April 10th, 1925.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
Attorneys for Defendant, Charles H. Belanger.

[Endorsed]: Due service and receipt of a copy of the within petition for writ of error is hereby admitted this 10th day of April, 1925.

STERLING CARR,
Attorney for Plaintiff.

Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [538]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER and VINCENT QUARTARARO,
Defendants.

ASSIGNMENT OF ERRORS OF DEFENDANTS, GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES HORACE BELANGER and VINCENT QUARTARARO.

Now, come the defendants, George Ford, George Harris, J. Evelyn, Charles Horace Belanger and Vincent Quartararo, jointly and severally, and in connection with their petition for a writ of error herein make the following assignment of errors which they and each of them aver occurred upon the trial of said cause, to wit:

1.

The Court erred in overruling the objection contained on page 6 of the transcript concerning the

jurisdiction of the Court, as more fully appears in said objection, as follows:

Mr. FAULKNER.—On behalf of the members of the crew and the officers of the "Quadra" who are named in indictment 15,914 as the first 23 defendants therein named, and who are named in each succeeding indictment on the calendar this morning, before the jury is empanelled and on behalf of these defendants collectively and individually we object to the jurisdiction of [539] the Court as to the persons of these defendants so that the record will distinctly show that their appearance at this time is not a waiver of protest of jurisdiction. That goes to all the defendants, I take it, without naming them, your Honor.

The COURT.—Yes, and the objection is overruled.

Mr. GREEN.—We note an exception.

2.

The Court erred in refusing the request of defendants to personally interrogate each juror, as more fully appears on page 14 of the transcript, as follows:

Mr. COGHLAN.—At this time, if the Court please, with great deference to the rule of the Court, the defendant Quartararo requests the privilege of personally interrogating each juror. We predicate this general demand upon the fact that of course a defendant at this bar is entitled to a jury of his own selection; we believe that there is a constitutional right involved in that.

The COURT.—Mr. Coghlan, no lesser person

than the Chief Justice of the United States, and the committee of which he is the head, examined that subject and it seems to me their ruling upon it is sufficient.

Mr. COGHLAN.—I have a great deal of respect also for that authority but the request is denied, is it?

The COURT.—Yes, the motion is denied.

Mr. COGHLAN.—We note an exception.

Mr. FAULKNER.—The same request on behalf of the members of the crew and the captain and Mr. Belanger and all of the defendants.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception. [540]

3.

The Court erred in declining the challenge for cause of Juror Morse—the record showing that all peremptory challenges of the defendants at time of empanelment of jury being exhausted—as follows:

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that it would require less evidence to satisfy his mind of the guilt of the defendants in a prohibition case than it would in any other kind of a criminal case

The COURT.—Mr. Morse, would it require any less evidence to convince your mind in a case where the prohibition law was involved than in any other kind of a criminal proceeding?

Mr. MORSE.—I think not.

The COURT.—You understand, do you not—all of you Gentlemen—that the Government must establish the guilt of these defendants to a moral

certainty and beyond a reasonable doubt, and if you are so instructed you will all require that kind of evidence, will you? Any other questions?

Mr. GREEN.—I would like to ask Mr. Morse if it is not a fact that he would give more credence to the testimony of officers for the Government than he would to defendants charged with the violation of the National Prohibition Act, or a conspiracy to violate that law, all other things being equal.

The COURT.—Yes, other things being equal.

Mr. MORSE.—Not intentionally.

Mr. GREEN.—Would he do it unintentionally?

Mr. MORSE.—That is a question that I could not answer.

The COURT.—Of course, Mr. Green, that involves a psychological fallacy, if you know what that is. No man could say what he would do unintentionally.

Mr. GREEN.—I understand that Mr. Morse said that he had [541] decided views on the subject of prohibition; then might I ask what those decided views are?

The COURT.—I don't think he said so. Did you, Mr. Morse?

Mr. MORSE.—I said I had very pronounced views.

The COURT.—Well, which is it, for or against?

Mr. MORSE.—For.

The COURT.—In spite of that, is your state of mind such that where a man or men are charged with a conspiracy to violate that law and other laws that you could give them a perfectly fair trial

and require the Government to establish their guilt to a moral certainty and beyond a reasonable doubt before you would convict them?

Mr. MORSE.—I believe I could.

Mr. GREEN.—If the Court please, I interpose a challenge for cause. I do not think that a man who has pronounced views—very pronounced views, as the talisman says, on the subject of prohibition enforcement, in favor of prohibition enforcement, can give the defendants a fair and impartial trial.

The COURT.—The challenge is denied. It is the Government's challenge.

Mr. O'CONNOR.—On behalf of the defendants McKenzie and Pensotti I have some questions to propound.

The COURT.—All right, what are they?

Mr. FAULKNER.—May the record show an exception on behalf of the defendants to your Honor's order denying the challenge?

Mr. COGHLAN.—That is, all the defendants.

The COURT.—Yes, all the defendants.

4.

The Court erred in overruling the objection concerning the jurisdiction as will more fully appear in the grounds of the objection on page 36 of the transcript hereinafter set forth: [542]

Mr. FAULKNER.—If your Honor please, before the introduction of any evidence on behalf of the prosecution, we desire to renew our motion concerning the jurisdiction of the persons and jurisdiction of the subject matter, and particularly point out to the Court that the statutes which these

men are accused of violating have been repealed by the treaty between Great Britain and the United States, and thereby depriving the court of jurisdiction of the subject matter.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

5.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully apear, as follows:

Mr. GILLIS.—Q. Did you look on board the "C–55"? A. Yes.

Q. What did you see on board the "C–55"?

Mr. FAULKNER.—We object to the question on the ground it is an effort on the part of the prosecution to prove an overt act prior to the establishment of the conspiracy; that is an objection which goes to the benefit of all officers and members of the crew, and is supplemented by an objection on behalf of Mr. Belanger to the effect that it is not binding upon him, hearsay, and the proper foundation has not been laid.

The COURT.—There are two answers to that. In the first place, that is within the discretion of the Court, and in the second place the overt act may be received as evidence of the conspiracy, itself. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—And the same objection as to Quartararo, and exception? [543]

The COURT.—Yes.

(Last question repeated by the reporter.)

A. A number of sacks, filled, with the word "Corby" painted on them, and a partly filled case of bottles.

6.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. Did you see the bottles?

A. Yes.

Q. Did you see what kind of bottles they were?

Mr. FAULKNER.—We object to that on the grounds heretofore stated in behalf of the officers, and members of the crew, and Mr. Belanger, as to the question propounded by the District Attorney.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(The last question was repeated by the reporter.)

Mr. GILLIS.—Q. Just the appearance of them, captain?

A. They were, I would say, beer bottles.

7.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Captain, now, before having any conversation with reference to the "Quadra," or her cargo, or anything that pertained to that, or pertained to your position aboard the [544]

"Shawnee," or that pertained to the crew in any manner, or any defendant in this case, did you make any promises to Captain Ford, or did you make any threats to him, or use any coercion to get him to make a statement to you of any kind, shape or form?

A. I did not.

Q. Now, did you have a conversation with Captain Ford at that time? A. I did.

Mr. FAULKNER.—I renew on the objection on behalf of the defendant Belanger that it is immaterial, irrelevant and incompetent, the proper foundation has not been laid as to him, and renew the motion on behalf of Captain Ford and the members of the crew that this is a conversation alleged to have occurred beyond the jurisdiction of the United States.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

8.

The Court erred in admitting further evidence concerning conversations between Captain Howell and Captain Ford over the objection of counsel for the defendants; to the ruling of the Court the defendants duly excepted.

9.

The Court erred in admitting in evidence that certain chart marked Government's Exhibit No. 1, the record concerning which is as follows:

Mr. GILLIS.—Q. And that is the only chart that you used? A. Yes.

Mr. GILLIS.—I ask that the chart be introduced

in evidence and marked Government's Exhibit No. 1.

Mr. CROWLEY.—The same objection that we have heretofore made, your Honor.

The COURT.—Objection overruled. [545]

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection.

(The document was here marked U. S. Exhibit 1.)

10.

The Court erred in admitting the evidence concerning the bearings of the "Quadra," the record concerning which is as follows:

Mr. GILLIS.—Q. What was the result of those bearings?

Mr. CROWLEY.—The same objection that we have heretofore made, and by that I mean that lengthy objection I stated in the record.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—The same objection and exception.

Mr. COGHLAN.—The same objection on behalf of the defendant Quartararo.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. The bearings placed the vessel 5.7 miles from the most northern of the North Farallone Islands.

11.

The Court erred in admitting further evidence concerning the position of the "Quadra" at the time of seizure, as will more fully appear in the record,

and to the receipt of which evidence the defendants duly objected and to the ruling of the Court duly excepted.

12.

The Court erred in limiting the cross-examination of Captain Howell concerning his competency as a navigator, as will more fully appear as follows:

Mr. GREEN.—Q. Have you ever been court-martialed? [546] A. Yes.

Q. How many times? A. Three.

Mr. GILLIS.—Just a moment, may it please the Court. I don't know what the object of this is.

The COURT.—No. It is manifestly improper, Mr. Green.

Mr. GREEN.—Well, your Honor, the competency of the officer—and of the witness—is certainly in issue.

The COURT.—Not at all. The statute provides the one question you can ask along that line.

Mr. GILLIS.—Mr. Green knew that before he ever asked the question.

Mr. GREEN.—The witness has said—

The COURT.—I don't want any discussion on it, Mr. Green; the objection is sustained.

Mr. GREEN.—I except to the Court's ruling.

Q. Do you remember, on the 14th of May, at about 7:30 o'clock P. M. ramming into the Red Stack tug "Sea Lion" and "Sea Fox"—

Mr. GILLIS.—Just a moment. To which I object as not proper cross-examination, and Mr. Green knows it is not proper cross-examination.

Mr. GREEN.—No, I don't.

The COURT.—Objection sustained.

Mr. GREEN.—Exception.

The COURT.—Don't ask any more questions like that, Mr. Green.

13.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. And as you approached the "Quadra" was any signal given to the "Quadra" by the "Shawnee"?

Mr. FAULKNER.—I object to that as immaterial, irrelevant [547] and incompetent, and not binding upon any defendant officers and the members of the crew of the "Quadra," and another attempt to prove an overt act prior to the establishment of the conspiracy.

The COURT.—Overruled.

Mr. FAULKNER.—Hearsay, and the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. GILLIS.—Answer the question.

A. At that time a signal was given to the "Quadra" to hove to, when we were within, say, about a mile of her.

14.

The Court erred in admitting further evidence of the witness Wellington S. Morse concerning the position and the seizure of the "Quadra" and the "C-55," to which evidence defendants duly objected and which objections were by the Court over-

ruled and to which ruling defendants duly excepted, as will more fully appear in the bill of exceptions.

15.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. GILLIS.—Q. What did it read at that time?

A. 44 fathoms.

Mr. FAULKNER.—Just a moment. I ask that the answer be stricken out in order that the defendants may object to that as immaterial, irrelevant and incompetent, and the proper foundation is not laid, and not binding upon any of the defendants in this case, and an act occurring beyond the territorial jurisdiction of the United States. [548]

The COURT.—Let the record show that the objection was made before the answer, and the objection is overruled.

Mr. FAULKNER.—Exception.

16.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you make a test of the speed of the "C-55"? A. Yes.

Q. What was her average speed?

A. 6.6 knots per hour.

Mr. FAULKNER.—We ask that that go out for the purpose of objection.

The COURT.—Let it go out.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, not within the

issues of the case, too remote, too general, the speed of the "C-55" to-day is not necessarily the speed of the "C-55" as of October 12, or any other time, not binding upon any of the defendants, individually or collectively.

The COURT.—I suppose the question, Mr. Gillis, is directed to the provisions of the treaty between the United States and Great Britain?

Mr. GILLIS.—Yes, your Honor; I am simply covering all points. Personally, I take the view it is not necessary to do it, but I appreciate the fact that there may be a record go on appeal, and I simply wish to put in all of the evidence that is necessary to cover all points.

The COURT.—Any other objection?

Mr. CROWLEY.—Yes, may we have an objection to this testimony, the same objection as we made when Captain Howell was on the stand, and made at length? [549]

The COURT.—Yes.

Mr. CROWLEY.—And exception.

Mr. FAULKNER.—May I indicate this to your Honor in connection with the reason that prompts the offer of this evidence, it is incumbent upon the proper foundation being laid to show that this speed is the speed at the time the ship was alongside of the "Quadra"; no other speed is controlling upon the Court, or gives them jurisdiction under the treaty for the seizure of either the "C-55" or the "Quadra." Now, Mr. Gillis has announced his purpose, and, therefore, if he sticks to the pur-

pose for which he offers the evidence, he must confine himself to legal evidence under that treaty.

The COURT.—Of course, you are familiar with the provision of the statute with regard to presumptions, and one of them is the condition that exists is presumed to have always existed; if there was any change in the speed of the boat from the 12th of October to the time the test was made, of course it would be a proper matter to be shown.

Mr. FAULKNER.—This question has been passed upon in a similar case to this, in which the District Court of Connecticut held the speed of a revenue cutter loaded and empty is not controlling upon the speed of a revenue cutter laden with liquor.

The COURT.—What does the treaty between the United States and Great Britain say?

Mr. FAULKNER.—The treaty between the United States and Great Britain is in this language: I will read the article under which, of necessity, Mr. Gillis' evidence must come in: "The rights conferred by this article shall not be exercised at a great distance from the coast of the United States, its territories or possessions, than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. [550] In cases, however, in which the lipuor is intended to be conveyed to the United States, its territories or possessions, by a vessel other than the one boarded and searched, it shall be the speed of such other vessel, and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised." Now, in pass-

ing upon the speed of a vessel other than the vessel which is seized, the District Court of Connecticut has determined that the speed, under the circumstances, in regard to sea, wind and tide, the speed under the circumstances under which the vessel is laden, is the only speed to determine the right of the seizure of the other vessel.

The COURT.—At the very time of the seizure?

Mr. FAULKNER.—At the very time of the seizure.

The COURT.—I do not agree with that, at all. The objection is overruled.

Mr. FAULKNER.—Exception.

Mr. GREEN.—I would like to make the further objection that no proper foundation has been laid in this, in that it has not been shown that any liquor was intended to be conveyed to the United States by the "C-55."

The COURT.—Of course, Mr. Green, that is, again, a question of the order of proof, and, of course, if it be not shown that the vessel was engaged in the business of conveying liquor, there may be something to that. You can renew that objection at the proper time. For the present it is overruled.

Mr. GREEN.—Exception.

Mr. O'CONNOR.—That objection, if your Honor please, applies to all the defendants.

The COURT.—Yes.

Mr. O'CONNOR.—And exception. [551]

Mr. GILLIS.—Q. Now, you may answer the

question, Mr. Anderson, the average speed of the "C-55." A. 6.6 knots per hour.

17.

The Court erred in admitting in evidence that certain book marked on the trial of said cause U. S. Exhibit No. 6, as will more fully appear in the following excerpt from the record:

Mr. GILLIS.—Q. Where did you find that book, Mr. Creighton?

A. On the shelf in the supercargo's cabinet.

Q. Of the "Quadra"?

A. On board the "Quadra."

Q. At that time? A. On October 15.

Mr. GILLIS.—I ask that the book be introduced in evidence and marked U. S. exhibit next in order.

Mr. FAULKNER.—If the Court please, we object to that on the ground that the book is immaterial, irrelevant and incompetent, hearsay, no proper foundation laid, not within the issues of the case, and another attempt to prove an overt act before the establishment of a conspiracy, not binding on the defendants jointly or severally; and upon the further ground, if the Court please, that the offer of this book in evidence is in violation of the rights of the defendants, each of them, jointly and severally, under the Fourth and Fifth Amendments to the Constitution; and particularly on all of the grounds urged at the time of the urging of the motion to suppress and exclude evidence. And as to all of the defendants other than the officers and members of the crew, we particularly urge the point that no proper foundation has been laid as

to them and it is not binding as to them. As to the officers and members of the crew, we urge all of the points urged in the motion to exclude evidence, and particularly that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. Your Honor [552] will have in mind that if that is a book in the handwriting of any person not a defendant in this case it cannot under any theory of the case be admissible in evidence.

The COURT.—It seems to be a partial log of the "Quadra" running from September 10 to October 7. Objection overruled.

Mr. CROWLEY.—May I enter the objection, if your Honor please, that it is self-serving; that there was and is no evidence showing or tending to show, *prima facie* or at all, the existence of a conspiracy alleged, or of any conspiracy. And there is no evidence at all showing or tending to show that he or any of the defendants was or is connected therewith. There is no evidence furthermore, your Honor, showing any personal responsibility or familiarity of any of the defendants with the book now proposed to be offered in evidence.

Mr. FAULKNER.—And I may add to that, the Court indicating before passing on the motion that it purported to be a log, the record in the handwriting of the persons who identified the book shows that it was hidden away on a shelf on the "Quadra" and undoubtedly could not have served the purpose of a log on the "Quadra" or any official instrument of any sort.

The COURT.—It is not a regular log. It is admissible. Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor.

(The book was here marked U. S. Exhibit No. 6.)

18.

The Court erred in denying the motion of the attorney for the defendants to strike out the parts of a book read into evidence, as will more fully appear as follows:

Mr. FAULKNER.—We move that everything in the book read by Mr. Gillis be stricken out and the jury instructed to disregard [553] it on all the grounds stated, and upon the further ground that the reading of the record shows that it is not an official log of the steamer "Quadra"; the last look shows that it is nothing more or less, giving it its best impression, than a copy of another instrument, and that other instrument would be the best evidence of that which is contained in this.

The COURT.—You mean so far as applies to the cargo? That that would necessarily be a copy of the ship's manifest?

Mr. FAULKNER.—Yes, your Honor.

The COURT.—That may be true, but it was found in the room of one the defendants here, the supercargo. The motion is denied.

Mr. FAULKNER.—As to the entire part, your Honor, or is it granted as to the copy of the list read?

The COURT.—Yes, I think I will grant it because the manifest would be the best evidence.

Mr. GILLIS.—Your Honor, would not that go to the weight of the evidence and the value of it rather than to what is contained here?

The COURT.—No, I think not. The copy of a ship's manifest made by defendant who is not on trial it seems to me would not be admissible. A statement made by him in regard to what was done, if it was during the progress of the conspiracy, is, of course, admissible against all. A mere copy of the document which showed the cargo of the ship would not be admissible. That part of it which purports to contain the cargo will be stricken out. As to the rest of it, the motion is denied.

Mr. FAULKNER.—Excepion.

Mr. GREEN.—Your Honor, I would like to add a further ground to the motion to strike out this evidence. It is apparent from the reading of the book that everything that is set forth therein [554] happened outside of the territorial waters of the United States.

The COURT.—You would not contend would you, Mr. Green, that if a man were here properly charged with crime that a statement made by him in London would not be considered admissible against him?

Mr. GREEN.—Well, that is all right for what it is worth.

The COURT.—It is for the jury to tell what it is worth. Motion denied.

Mr. GREEN.—I think, your Honor, that is a question of law.

The COURT.—I deny the motion.

Mr. GREEN.—Exception.

19.

The Court erred in admitting in evidence certain pictures marked U. S. Exhibits 8 to 15 inclusive, as will more fully appear, as follows:

Mr. GILLIS.—Q. And was there any change in the cargo of the ship from the time it was brought in by Captain Howell until these pictures were taken?

A. The cargo of the ship was in the condition in which it was brought in.

Mr. GILLIS.—I ask that these pictures be introduced in evidence and marked Government's exhibit next in order.

Mr. CROWLEY.—The same general objection that we have had running throughout the trial.

Mr. FAULKNER.—The same objection on behalf of all of the defendants, jointly and severally.

Mr. GREEN.—Particularly the objection on behalf of the officers and the captain and the crew of the "Quadra" on all of the grounds stated in the motion to exclude evidence.

Mr. FAULKNER.—I might indicate further that the pictures taken show that they do not conform to the foundation laid by Mr. Creighton and do not represent the condition of the cargo at the time of seizure. [555]

The COURT.—They show what was in the boat. Overruled.

Mr. FAULKNER.—Exception.

20.

The Court erred in admitting in evidence cer-

tain slips of paper marked U. S. Exhibit No. 16 over the objection of the attorneys for the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. These are the ones I want. These six slips of paper which you have just handed me were found where?

A. In the captain's room on the "Quadra."

Q. On October 15? A. On October 15.

Mr. GILLIS.—I offer these six slips of paper in evidence, may it please the Court, and ask that it be marked Government's exhibit next in order.

Mr. CROWLEY.—The same objection.

Mr. FAULKNER.—The same objection on behalf of the defendants jointly and severally, and the further objection that the pictures were found three days postdating the seizure and the arrest of the defendants, and during a period of time on which the vessel was in the control of people other than the defendants; the proper foundation has not been laid.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

21.

The Court erred in denying the motion of the attorneys for the defendants to strike out contents of said slips of paper, as will more fully appear as follows:

Mr. GREEN.—I move to strike out the exhibit just offered by the Government on all of the grounds urged in the motion to exclude evidence heretofore made, and on the further ground that it is apparent from the reading of this exhibit that

they are [556] not evidence of any violation of any law of the United States; a transfer of liquor on the high seas; and there is no showing to the contrary, from one foreign vessel to another vessel, it is certainly not a violation of any law of the United States.

The COURT.—No, not of itself, but I cannot anticipate what the evidence will be; of course, if there is no evidence here that this vessel was lying out there for the purpose of landing liquor on our shore, that would be true; but this is only one step of the evidence, and it may develop that there was some landing. I deny the motion.

Mr. GREEN.—Exception.

22.

The Court erred in admitting in evidence that certain book marked U. S. Exhibit No. 17, as will more fully appear as follows:

Mr. GILLIS.—Q. Do you know what part of the "Quadra" it came from?

A. From the officers' quarters.

Q. From the officers' quarters? A. Yes.

Mr. GILLIS.—I ask that it be introduced in evidence and marked Government's exhibit next in order.

Mr. FAULKNER.—The same objection to it that was made to the introduction of similar exhibits taken from the "Quadra," and on the further ground that the instrument in question was illegally seized from the possession of the defendants, officers and members of the crew of the "Quadra" at a point beyond the territorial jurisdiction.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

(The book was marked U. S. Exhibit No. 17.)

23.

The Court erred in admitting in evidence the agreement of [557] articles and account of crew, over the objection of the defendants, as will more fully appear as follows:

Mr. GREEN.—I object to it on behalf of the captain and officers and crew of the "Quadra," particularly on all of the grounds stated heretofore in the motion to exclude evidence on file here.

The COURT.—It is a form of ship's articles prescribed by the statute of the Dominion. Overruled.

Mr. GREEN.—Exception.

24.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness John Toland on direct examination, as follows:

Mr. GILLIS.—Q. Just relate the manner in which the cargo was unloaded from these boats and taken to the customs-house?

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent, and as hearsay.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. It was unloaded by inspectors at the waterfront and hauled to the appraisers stores by the overland Freight & Transfer Company.

Mr. FAULKNER.—I move that the answer be striken out as clearly hearsay.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

A. (Continuing.) Each load was accompanied to the appraisers stores by a customs officer and delivered to me. [558]

25.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Where was this sack taken from, that is, what boat did this sack come from?

Mr. FAULKNER.—We object to that on all the grounds heretofore stated, and particularly on behalf of the officers and members of the crew on the ground that it is in violation of their rights under the Fourth and Fifth Amendments to the Constitution, and that the seizure of the "Quadra" occurred beyond the territorial jurisdiction of the United States.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. "C-55."

26.

The Court erred in admitting in evidence, over the objection of the defendants, certain quantities of liquor marked U. S. Exhibit No. 20, as will more fully appear, as follows:

Mr. FAULKNER.—We renew our objection on the ground that the proper foundation has not

been laid; there is nothing in the record to show that this liquor was taken from the "Quadra."

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception. And the general objection on behalf of the officers and members of the crew is also urged.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

The COURT.—You gentlemen do not need so many objections. One objection to a given line of evidence, if well taken, is as good as a thousand. As Judge Rudkin has remarked frequently in the Court of Appeals, one good objection is as good as a thousand. [559] Why repeat it every time a matter is referred to?

Mr. FAULKNER.—The reason is, may it please the Court, that the authorities of the Circuit Court are not uniform that every right is protected.

The COURT.—Of course, if it is a different kind of evidence it would be a different proposition. You do not need an exception for every bottle of whiskey or bottle of gin that it offered.

Mr. FAULKNER.—That is my own feeling, your Honor, but it is not always the feeling of the Circuit Court of Appeals.

The COURT.—I think it is perfectly safe to rely upon it. Of course, gentlemen, if you would rather encumber the record with all these objections, it is your privilege so to do.

Mr. FAULKNER.—There in line with the Court's remarks, we will follow your Honor's suggestions.

The COURT.—Yes. I think you are thoroughly protected. If you have an objection and an exception to one of these parcels it certainly is as good as if you had an objection and exception to each and every one of them.

Mr. HENNESSY.—If the Court please, I understood that a stipulation was entered into yesterday that one objection taken by counsel for any of the defendants covered all the others.

The COURT.—Yes, it was, Mr. Hennessy. That was understood with Mr. Gillis.

Mr. HENNESSY.—I desire that the defendants Neilsen and Allen be given the benefit of the objections taken by the other counsel.

The COURT.—Yes, I think that was understood by Mr. Gillis, that any objection made by one goes to the benefit of all.

Mr. GREEN.—Without waiving any of the grounds of objection I will stipulate on behalf of the defendants whom I represent that the exhibit now offered by Mr. Gillis contains in excess of one-half on one per cent of alcohol by volume and that it is fit [560] for beverage purposes.

The COURT.—Then it may be admitted in evidence. (U. S. Exhibit No. 20.)

27.

The Court erred in permitting the introduction into evidence of further quantities of liquor claimed to have been seized from the "Quadra," to which objection was regularly made by the defendants through their counsel, and by the Court overruled, and to which ruling the defendants

then and there duly excepted as will more fully appear in the bill of exceptions.

28.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. And put alongside of her?

A. Yes.

Q. State what happened after you pulled alongside of her?

Mr. CROWLEY.—Just a minute. The same objection that we have been making all along, your Honor.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—That is on behalf of all of the defendants?

The COURT.—Yes.

A. I went alongside and I turned my searchlight in on her; it was dark. I searched her and at the forward hatch were some barrels of alcohol.

29.

The Court erred in admitting in evidence the barrel, seizure No. 27,643, and which was marked U. S. Exhibit No. 23, as will more fully appear as follows:

Mr. HENNESSY.—Q. You never saw it on the "903-B"? [561] A. No, sir.

Q. When was it that you received it as the appraisers' storeroom?

A. I think it was the 13th of October.

Q. Of your own knowledge, you don't know where the barrel came from? A. No.

Q. Just what was told you?

A. Except from the ticket that came with it.

Mr. HENNESSY.—We object to the testimony of this witness, Judge, on the ground that it is hearsay, and we move to strike it out.

The COURT.—The "903–B" was the one that Mr. Sortes testified to?

Mr. GILLIS.—Yes, your Honor.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Exception. I desire to object to it on the ground that it is immaterial, irrelevant and incompetent, it has not been identified as coming from the "903–B"; and, furthermore, it was seized as the result of an illegal and unreasonable search and seizure.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

Mr. FAULKNER.—We supplement that objection upon the ground that it is not binding on the officers and members of the crew, because there is no showing in the record that it was transferred—even giving it the worst construction—at a point where the transfer was legal. Also the general objections heretofore made.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

30.

The Court erred in admitting in evidence other quantities of liquor claimed to have been seized on the "903–B," to which [562] objection was

duly made by the defendants and overruled by the Court, and to which ruling the defendants by their counsel then and there duly excepted, as will more fully appear in the bill of exceptions.

31.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you know a Mr. J. Lloyd in September of 1924? A. I met him, yes.

Q. Did you make any sale to him of burlap bags?

Mr. FAULKNER.—Objected to on the ground, if your Honor please, that it is immaterial, irrelevant and incompetent, and not binding upon any of the other defendants, and not within the issues of the case, and the proper foundation has not been laid for its introduction in evidence.

The COURT.—Is Mr. Lloyd a defendant?

Mr. GILLIS.—Mr. Lloyd is a defendant.

Mr. O'CONNOR.—He is not on trial.

Mr. GILLIS.—He is not on trial, but he is a defendant in this action.

The COURT.—I presume that you intend to connect this up.

Mr. GILLIS.—I do.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

32.

The Court erred in admitting in evidence that certain order marked U. S. Exhibit No. 25 as will more fully appear as follows:

Mr. GILLIS.—Q. Who gave you the order?

A. Mr. Lloyd.

Q. And the order is for what?

A. 15,000 burlap bags. [563]

Q. Does it show on there the size of the bags?

A. Yes.

Q. What size are they?

A. 12,000 19½ to 27½, 3000 17½ to 31.

Mr. GREEN.—Objected to, if your Honor please, as not being in the handwriting of the defendant charged, there is no proper identification of the person this order was sold to, as being one of the defendants in this case; the sale is really to the Lloyd Pacific Co., which has not been identified as being connected with any defendant in this case.

The COURT.—I presume that it will be connected up. Of course, if it is not, it will by no possibility do anybody any harm. Overruled.

Mr. GREEN.—Exception.

Mr. FAULKNER.—If the Court please, the instrument does not even purport to have been sold to a defendant in this case.

The COURT.—But the witness testified what he did; he sold it to Win. Lloyd.

Mr. FAULKNER.—If that is a fact, then this instrument is of no value.

The COURT.—What is it, Lloyd Pacific Co.?

Mr. GILLIS.—It is Lloyd Pacific Co.

The COURT.—Is this a regular bill shipped in the regular course of business for that sale to Lloyd? A. Absolutely, yes.

The COURT.—It will be admitted.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(Marked U. S. Exhibit 25.) [564]

33.

The Court erred in admitting in evidence over the objection of the defendants that certain book marked U. S. Exhibit No. 26, as will more fully appear as follows:

Mr. GILLIS.—Q. Tell us what it is.

A. The delivery tag from the shipping department.

Q. For what?

A. For 30 bales of bags, 500 to a bale.

Mr. GILLIS.—I ask that that be introduced and marked Government's exhibit next in order.

Mr. CROWLEY.—Same objection.

The COURT.—That covers the bags included in this order? A. Yes.

Mr. GILLIS.—The same order number appears in each one?

A. I did not look at that, Mr. Gillis. I think it does.

Mr. FAULKNER.—The same objection, with the further objection that it shows it was not received by the party to whom the claim is made that the instrument was sold, and it could only be binding on the person whose name is subscribed to it, the one into whose possession they came.

The COURT.—Who is he?

Mr. GILLIS.—J. S. and some name beginning with "B."

Mr. FAULKNER.—Who he represents is not indicated there.

The COURT.—Q. At any rate, these were the bags which were sold to Mr. Lloyd, were they?

A. Yes.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—Exception.

(The book was here marked U. S. Exhibit No. 26.) [565]

34.

The Court erred in admitting in evidence certain testimony over the objection of the defendant as will more fully appear as follows:

Mr. GILLIS.—Q. Did you receive any communication with reference to order No. 2730, shown here on Government's Exhibit 26 on September 25, 1924? A. Yes, I did.

Q. What were those instructions that you received?

Mr. FAULKNER.—I object to that on the ground it is immaterial, irrelevant and incompetent, not binding on any of the defendants, and a trasaction had or intended to be had with some person not before the Court, and not binding upon any defendant in this case, and the proper foundation has not been laid.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

A. To deliver 15,000 bags that we had on hand between Pier 18 and 20, and have the teamster see Captain Sam.

35.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows

Mr. GILLIS.—Q. 30 bales? A. Yes.

Q. Where did you takes those 30 bales?

Mr. FAULKNER.—The same objection, if your Honor please.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. To Pier 22.

Mr. GILLIS.—Who did you deliver them to there?

A. This gentleman that signed the receipt.

Q. What motor-boat did they go to?

A. They went on the "Californian." [566]

Mr. FAULKNER.—We object to that on the ground it is hearsay.

Mr. GILLIS.—Not at all.

The COURT.—Q. Do you know, Mr. Stewart —were they taken there from you by a motor boat? A. The boat was there.

Q. The boat was there? A. Yes.

Q. Did the person who signed this come from the motor boat? A. Yes, he was on the boat.

The COURT.—The objection is overruled.

Mr. FAULKNER.—Exception.

36.

The Court erred in admitting in evidence over the objection of the defendants Government's Exhibit 27 for Identification, as will appear more fully, as follows:

Mr. GILLIS.—Q. I show you Government's Exhibit No. 27 for Identification, a tag attached to a sheet of paper, and I ask you to examine it; have you ever seen that before? A. Yes, sir.

Q. Where did you get that tag?

A. I took it off a bale of sacks I found in the forward hold of the steamer "Quadra."

Mr. GILLIS.—I now offer, ask that Government's Exhibit No. 27 for Identification be introduced in evidence.

Mr. FAULKNER.—We object to the introduction of the tag in evidence, if the Court please, as to the officers and members of the crew of the "Quadra" on the ground that it is the result of an illegal seizure. The point of the objection is more fully covered by the motion to exclude evidence heretofore presented to your Honor. On behalf of the remaining defendants it is objected to on the ground that it is immaterial, irrelevant and incompetent and hearsay and the proper foundation has not been laid, and also as self-serving. [567]

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 27.)

37.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Did you see any of the liquor labeled on the "Quadra" of the same type and kind that you have just designated?

Mr. HENNESSY.—I object to that on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. HENNESSY.—Exception.

A. I identified absolutely the same ten-gallon kegs—marks, type, stencils, everything in appearance.

38.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Have you ever visited the steamer "Quadra"? A. I have.

Mr. FAULKNER.—We object to that as to all defendants other than those men contained on the "Quadra" as immaterial, irrelevant and incompetent, and hearsay.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. RIORDAN.—Q. How did you go to the "Quadra," by what means?

A. A power-boat.

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling. [568]

Mr. FAULKNER.—Exception.

39.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Now, were you going to the "Quadra" for any particular purpose?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—And, further, it is not within the issues of this case, that it is not a boat claimed in the indictment to have been used for the purpose of consummating any conspiracy charged.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

40.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Have you made arrangements with anybody—answer that "Yes" or "No"—had you made arrangements with anybody for a cargo of liquor?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

41.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Magruder on direct examination, as follows:

Mr. RIORDAN.—Q. Had you had any prior arrangement about [569] landing liquor from boats similar to the "Quadra" prior to this mission?

Mr. FAULKNER.—The same objection, and the further objection that it is immaterial, irrelevant and incompetent if this man landed liquor from any number of boats other than the "Quadra."

Mr. RIORDAN.—I think I can show his connection, if I am given an opportunity.

Mr. GILLIS.—I do not understand that we are confined in this conspiracy to the "Quadra," alone.

Mr. FAULKNER.—Read the indictment.

Mr. GILLIS.—That is simply one of the overt acts.

Mr. FAULKNER.—There is no other overt act alleged in the indictment, except overt acts founded on transactions with the "Quadra."

The COURT.—Basing the ruling on various decisions of the United States Courts of Appeal throughout the country, I held in the case of this very man Terry, whose name is exceedingly familiar to me, and I think he was out on bail from a conviction in this Court—I held in his very case that it was competent on a charge of conspiracy to land liquor to show other instances as bearing upon the general scheme or purpose. I founded that ruling upon a decision of the House of Lords, upon several decisions of the courts of appeal of the various circuits, and a decision of the Supreme Court of California, People vs. Gray, and the reasoning of Prof. Wigmore in his chapter upon the subject, and, curiously enough, the reasoning adopted by the House of Lords, the courts of appeal, and the Supreme Court of California was identically the same, although, in no one of the cases, did they refer to or seemingly have knowledge of the others. It seems to me perfectly apparent that in view of those [570] authorities, and from the point of view of reason, that where men are charged with conspiracy to do

a particular act, that it is a question, necessarily, of general or common design. In the case in the House of Lords, for instance, a man was charged with illegal operations; it was claimed that the operation was legal, and the Crown was permitted to show that he had performed other illegal operations.

Mr. FAULKNER.—Might I interrupt right there, if this witness was a defendant in that proceeding it would be competent to show that he was engaged in rum running with other vessels.

The COURT.—What difference does that make?

Mr. FAULKNER.—What difference does it make if a man who is not a party to this proceeding was a rum runner to other boats?

The COURT.—I assume that his landing was in connection with some defendant here.

Mr. FAULKNER.—The Court has to assume it from something not in the record.

Mr. RIORDAN.—It takes time to connect this up.

The COURT.—I will overrule the objection. If it is not connected up, it will be stricken.

Mr. GREEN.—I respectfully assign the Court's remarks regarding the prior conviction and being on bail at the present time of Sam Terry as prejudicial, and ask that the jury be instructed to disregard them.

The COURT.—Yes, you are correct about that. You will disregard that, gentlemen of the jury.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. Yes.

Q. What other boat prior to the "Quadra"?

A. The "Malahat." [571]

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

43.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Mr. RIORDAN.—Q. What did you do in connection with the "Malahat"?

Mr. FAULKNER.—The same objection.

The COURT.—The same ruling.

Mr. FAULKNER.—Exception.

A. I took one load.

44.

The Court erred in admitting in evidence certain testimony concerning the activity of the witness Magruder with ships other than the "Quadra," to which evidence the defendants through their attorneys regularly objected, which objections were overruled by the Court, to which rulings the defendants through their counsel then and there duly excepted, as more fully appears in the bill of exceptions.

45.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. What was your interest in landing that? Did you get anything for it?

Mr. FAULKNER.—The same objection, and leading, and no foundation laid, and not binding upon any defendant in this proceeding.

The COURT.—Overruled. [572]

Mr. FAULKNER.—Particularly leading.

The COURT.—Overruled.

Mr. FAULKNER.—Exception.

A. $100 a week.

46.

The Court erred in admitting in evidence certain testimony over the objection of the defendants by the witness Herbert J. Clance, as will more fully appear as follows:

Mr. RIORDAN.—Q. Now, did you help get the cargo on board of the "Viz-4"? A. Yes.

Mr. FAULKNER.—If your Honor please, may an objection be noted in the record prior to the answer to the question?

The COURT.—Yes.

Mr. FAULKNER.—Upon all of the grounds indicated in the objections to the testimony of Mr. Magruder, and I ask the Court at this time that it may be considered that all testimony that this witness is about to give concerning his contact with the "Quadra" be deemed objected to by each and all of the defendants, and the objection overruled and an exception noted.

The COURT.—Yes.

Mr. FAULKNER.—In the interest of expedition.

47.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. When did he first employ you to do any work for him?

Mr. COGHLAN.—We object to that as not relevant, competent, or material, and upon the ground that no proper foundation has been laid for it.

The COURT.—It is impossible to tell, Mr. Coghlan. If he [573] hired him to spade up his garden, it could not hurt you any. I anticipate that the Government intends to lead up to something connected with this case.

Mr. RIORDAN.—That is true.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. About April or May.

48.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows.

Mr. RIORDAN.—Q. What was the work that he employed you to do?

Mr. COGHLAN.—We object to the question as immaterial, irrelevant and incompetent, calls for hearsay, no proper foundation has been laid for it, particularly no proper foundation connecting the incident intended to be adduced with the matter alleged in this indictment, that it is not within the issues of the case, and is an attempt to prove an overt act or overt acts prior to the establishment of a conspiracy, if there be any conspiracy; that it is not binding upon the defendant Quartararo, nor upon any of the defendants here.

The COURT.—What is your point, Mr. Goghlan, with regard to foundation?

Mr. COGHLAN.—There has been no foundation

here showing a connection of Quartararo with the commission of any offense against the United States, nor has there been any connection between him and the conspiracy, the objects of which are recited in the indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception. [574]

A. Carrying liquor.

49.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Did you talk with him on the arrangement of carrying liquor? Answer that "Yes" or "No." A. Yes.

Q. How were you to carry the liquor?

Mr. COGHLAN.—We offer the same objection as to that, if it please your Honor, and upon the further ground that there is not, and, obviously there is not any foundation or connection between this employment and anything that pertains to the issues raised by the plea of not guilty to this indictment.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

A. By gasoline launch.

50.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. What was the name of the gasoline launch? A. "California."

Mr. COGHLAN.—The same objection runs to that, and your Honor will allow me the same exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you get the "California" from? A. From Sausalito.

Mr. COGHLAN.—We object to that as not relevant, material, or competent, and as having no bearing upon the issues of this case, and as not connected with this defendant, and having to do [575] with other people that are not concerned here, or with whom this defendant, or any of these defendants, is concerned or are concerned.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. From whom in Sausalito did you get the boat "California."

Mr. COGHLAN.—The same objection and exception.

A. Well, he gave me the keys to the pilot-house.

Q. Who gave you the keys? A. Vincent.

Q. Vincent who? A. Quartararo.

Mr. COGHLAN.—The same objection, and I presume the same ruling and exception, your Honor?

The COURT.—Yes, the same ruling.

Mr. RIORDAN.—Q. Did you go out in that boat for liquor or not? Answer "Yes" or "No."

A. Yes.

Mr. COGHLAN.—Just a minute. Will your Honor allow the objection heretofore made to apply to that, and an exception?

The COURT.—Yes.

Mr. RIORDAN.—Q. Where did you go to?

Mr. COGHLAN.—The same objection and exception.

A. Outside of the Farallones.

51.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. To what boat, first, if you went to any boat?

Mr. COGHLAN.—Just a minute. We object to that as not relevant, material or competent, upon the ground that no proper foundation has been laid, and upon the further specific ground [576] that it may involve something that has absolutely nothing to do with the commission of any offense charged in this indictment, and that it is the duty of the district attorney first to show by a proper foundation that there is any such connection, if there be.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Read the question.

(Last question repeated by the reporter.)

A. The first boat, you want to know?

Q. Yes. A. That was the steamer "Norburn."

52.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the Court to the prosecution's witness Sam Crivello on direct examination, as follows:

The COURT.—I will ask him a question first:

Q. Did you go to the steamer "Norburn" for liquor? A. Yes.

Q. Did you get liquor there? A. Yes.

Q. What did you do with it when you got it?

A. Took it ashore.

Q. Who did you deliver it to?

A. Vincent Quartararo.

Q. The defendant Quartararo? A. Yes.

The COURT.—Motion denied.

Mr. COGHLAN.—We now move that the matter be stricken out which your Honor elicited, on the same grounds interposed and underlying the motion that we last made.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception. [577]

53.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

The COURT.—You mean from the "Norburn"?

Mr. RIORDAN.—From the "Norburn."

Mr. COGHLAN.—In April or May, 1924?

Mr. RIORDAN.—Yes.

Mr. COGHLAN.—We object to that on all of the grounds interposed, that it is not relevant, material or competent, and there is no proper foundation that has been laid, and I call your Honor's attention particularly to the fact that the treaty between the United States and Great Britain was made May 22, 1924, and that that is pleaded in the indictment.

The COURT.— It could not make any difference. These defendants here are charged with a con-

spiracy. Now, under familiar principles, if the conspiracy took place at another time, or under equally familiar principles, if there was a conspiracy between the defendant Quartararo and this defendant, it would be sufficient to convict, and it would be sufficient to convict whether it were before or after the time that the treaty was negotiated between the United States and Great Britain. Furthermore, it is equally apparent to me, from all of the authorities which I had occasion to review in a previous opinion in this case that if there was a crime committed, and it was committed partly without, if it was beyond the limits which might be specified in any case,—it was committed partly without and partly within this jurisdiction, and, therefore, it makes no difference whatsoever, so far as this part of it is concerned, at least, whether or not the liquor was obtained outside an hour's steaming, or four marine leagues, or whatever it is. [578]

Mr. COGHLAN.—Of course, the position that I personally take, if I may briefly state it, is this, that an accusatory paper of this character must inform the defendants of the particular conspiracy with which they are charged, and that it is not proper for the district attorney to allege matters such as are contained here, and which exclusively relate to the transaction affecting one vessel, to wit, the "Quadra," and surprise us by bringing into court matter that has absolutely nothing to do with the conspiracy that is attached to and woven around about and made a part of what occurred

upon the "Quadra," and what occurred between this shore and the "Quadra" and no other vessel. It seems to me this ought to apprise my client, and the other defendants, here, of what they are brought into Court to defend themselves against, and it would be impossible if it were the claim of the prosecution here and your Honor should sustain that claim, that any offense committed against the laws of the United States in connection with the prohibition act, or the Tariff Act of 1922 might be imported here for us to defend; absolutely impossible, our hands would be tied. We are only guided by this instrument, and so have we been guided, and we have thought that the proof of the prosecution would be, except in so far as it bore upon the issues here that were raised by the combination, of the accusation of the conspiracy, and the references to the particular vessel involved; it would be impossible for us to defend unless we depended upon that. That is the position that I take.

The COURT.—I do not know, Mr. Coghlan, to what extent your researches have gone in the matter of authorities, but the rule is thoroughly well settled in this Court without a single dissent, and has been so often presented here, for instance, in the Nan Patterson Case, in the recent case of the policemen that [579] were here, and in a dozen other cases, that the thing, after all, is the conspiracy, and the defendants, having been apprised that the Government charged that they had entered into a conspiracy to violate certain statutes

that any acts which were in violation of those statutes and which concerned any of the defendants, and any other person, or more than one person, so that it would constitute, under the law, a conspiracy, is admissible. We have had that here many times. The authorities are perfectly clear upon this subject, and the reasoning is equally clear; and it is equally well settled that where the indictment may charge a single overt act, that any number of overt acts which are in pursuance of it, or in connection with the conspiracy, are admissible. the objection is overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Will you read the last question?

(Last question repeated by the reporter.)

A. A load of liquor.

54.

The Court erred in admitting in evidence testimony of the witness Sam Crivello on direct examination concerning a trip to the "Malahat" over the following objection:

Mr. COGHLAN.—We now ask that your Honor allow an objection to go to that, that we made heretofore.

The COURT.—Yes.

Mr. COGHLAN.—And the same exception.

55.

The Court erred in admitting in evidence further testimony from the witness Sam Crivello concerning trips to the "Malahat" over the objections of attorneys for the defendants, which objections

were by the Court overruled, and to which rulings defendants duly excepted. [580]

56.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Did you meet another party over at Vincent's place of business who was introduced to you by Vincent as C. H.? A. Yes, sir.

Mr. COGHLAN.—That is of course a leading question and suggestive of an answer and puts the answer clearly in the mouth of the witness.

Mr. RIORDAN.—And yet a proper question.

The COURT.—Objection overruled.

Mr. COGHLAN.—Well, I don't think it is proper.

The COURT.—I have ruled, Mr. Coghlan.

Mr. COGHLAN.—Your Honor will allow us all the objections heretofore interposed?

The COURT.—Yes, objection overruled.

Mr. COGHLAN.—Exception.

57.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. You brought out some empty sacks? A. Yes.

Mr. COGHLAN.—We move that that be stricken out as not responsive to the question, and we ask for the additional objection that it is hearsay, and not material, relevant or competent, and no proper foundation for it.

The COURT.—Well, of course, Mr. Coghlan, a statement made by one of the parties to a conspiracy during the progress of the conspiracy is not hearsay and it certainly would not be hearsay as [581] to him. But I do not understand quite what the witness has said.

Q. You say you brought out some empty sacks; what do you mean by that, brought out from where?

A. From the city here.

Q. You took them where?

A. To the "Quadra."

Q. What was the conversation you had with Mr. Belanger?

A. That was to take some sacks out, empty sacks.

Q. To the "Quadra"? A. Yes.

Q. What did he say about it?

A. He asked me if I would take them out and so I said yes.

Mr. RIORDAN.—Your Honor will recall that there is testimony here with reference to the "California."

The COURT.—Yes, I remember that. Motion denied.

Mr. COGHLAN.—Exception.

58.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. During your trips out to these boats did you see any other small boats like your own meeting the "Malahat" and the "Quadra"?

Mr. COGHLAN.—We offer the same objection, and the further objection that that has nothing to do with this case, it is not material, relevant or competent.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. You mean small boats?

Mr. RIORDAN.—Q. Yes, I do.

A. I met the "Ocean Queen," the "Viz-4" and another boat which has no name, it is tied up down at the wharf.

Q. Any other that you recall?

A. The "Florence." [582]

59.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. Just tell us about that. Try and fix the time as near as you can, on the first trip?

Mr. COGHLAN.—We object to that as not material, relevant or competent, and upon all of the grounds heretofore interposed, and on behalf of each and all of these defendants.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. It was in the middle of August.

60.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. And when these attorneys

are telling you, fixing your dates as the 1st of September, might it be the 1st of October—

Mr. GREEN.—Just a moment.

Mr. RIORDAN.—Just allow me to finish the question.

Mr. COGHLAN.—The question is not fair.

Mr. RIORDAN.—When it comes to fairness, we are at least entitled to finish a question, and then you can make all the objections you want. Read the question.

(Last question repeated by the reporter.)

I mean when you referred to the last trip.

Mr. GREEN.—Just a moment. I object to the question as not being proper redirect examination, and an attempt to bolster up the witness, and change his absolute testimony.

Mr. RIORDAN.—Oh, no. [583]

Mr. GREEN.—Leading and suggestive.

Mr. RIORDAN.—I think it is fairly clear, but I am making it a little more clear.

The COURT.—He may answer.

Mr. GREEN.—Exception.

The COURT.—You had better read the question to him.

(Last question repeated by the reporter.)

A. Well, about the dates I don't hardly remember. I don't think I could be that far off, from September to October.

61.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you see Mr. Quartararo on that day?

Mr. COGHLAN.—We object to that on the same grounds heretofore interposed by both counsel.

The COURT.—Objection overruled.

Mr. COGHLAN.—We reserve an exception.

A. Yes, sir.

62.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Mr. Pearson, these exhibits 30 to 36 inclusive, did you see these on the date that Mr. Hoskins testified to, on Monday, the 10th of November, 1924?

Mr. FAULKNER.—The same objections, your Honor, concerning that, subsequent to the consummation of the conspiracy.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Yes. [584]

63.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Did you have any conversation with Mr. Quartararo with reference to the redemption of some one dollar bills?

Mr. COGHLAN.—We object to that as leading and suggestive of an answer, and with a great deal of regret assign that as misconduct on the part of the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I did.

64.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. What was that conversation?

Mr. COGHLAN.—We object to that on the same grounds.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. Mr. Quartararo asked me if torn bills could be redeemed, or words to that effect.

Mr. COGHLAN.—We now move that that be stricken out as having absolutely no connection with this case, and as not material, relevant or competent, and no proper foundation laid, and as being hearsay as to other defendants, and tending in no way to connect the defendants with the offense here charged.

The COURT.—The motion is denied.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. What else was said? [585]

A. I think I asked Mr. Quartararo what sort of bills he had reference to and asked him if he had the bills with him and he said, "No."

65.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Pearson, as follows:

Mr. GILLIS.—Q. Did you have any talk with the man that brought them in? A. Yes, I did.

Q. Now let us have it?

A. I don't recall just what it was. He said he had some torn bills. I told him I didn't have time to look at them; that was right during the rush hour at noon. I asked him if he would leave them on receipt and I would look at them and if possible would collect on them for him. He said he would do that. I asked him if he could come back later the same day and he said he would if he could, but otherwise he would be in during the early part of the next week.

Mr. FAULKNER.—Your Honor, might I interrupt to object to this conversation as immaterial, irrelevant and incompetent as to any party not connected with this proceeding, and I move to strike out the answer of the witness.

The COURT.—The objection is overruled and motion denied.

Mr. FAULKNER.—Exception.

66.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—I now offer the photostat copy of that part of the articles of incorporation, No. 15,006, which has just been testified to, showing the signature of Vincent Quartararo.

Mr. COGHLAN.—We object to it on the ground that no proper [586] foundation has been laid

for it, and that it is not material, relevant or competent.

Mr. GILLIS.—I understand your objection would not go to the fact that it is simply a photostat copy?

Mr. COGHLAN.—No.

The COURT.—The objection is overruled.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 37.)

67.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Do you know whether or not that is the signature of Mr. Quartararo?

A. Yes, that is the signature of Vincent Quartararo, but I don't know who Vincent Quartararo is.

Mr. COGHLAN.—We move that the answer be stricken out as not responsive to the question. We also desire to object to the question on the ground that there is no proper foundation laid for it, and it is not material, relevant or competent.

The COURT.—That is the signature card which the bank uses for identification for checks, kept in the regular course of business?

A. Yes, that is the regular original signature card.

The COURT.—Motion denied and objection overruled.

Mr. COGHLAN.—Exception.

68.

The Court erred in admitting in evidence that certain U. S. Exhibit No. 38 as will more fully appear as follows:

Mr. GILLIS.—In place of offering the original card, I desire to offer a photostat copy of the card. [587]

Mr. COGHLAN.—As to that we have no objection.

Mr. FAULKNER.—Save the objection, of course, it is not binding upon any of the other defendants in the case.

The COURT.—It is only for the purpose of furnishing an exemplar of the handwriting?

Mr. GILLIS.—That is the only purpose for which it is offered. I offer it in evidence.

Mr. COGHLAN.—We object to it on the ground there is no proper foundation, no connection between the defendant and any other thing in the record, and it is not relevant, material or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Did your Honor pass upon my objection?

The COURT.—I overrule the objection.

Mr. FAULKNER.—Exception.

(U. S. Exhibit 38.) [588]

69.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GILLIS.—Q. Have you checks No. 301 and 303 to the account of Vincent Quartararo?

A. Yes.

Q. Those two checks are what, Mr. Shields?

Mr. COGHLAN.—We object to that on the same grounds, that there has no foundation been laid, it is not material, relevant or competent to anything here.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

Mr. GILLIS.—Q. Are they checks of Vincent Quartararo? A. Yes.

70.

The Court erred in admitting in evidence those certain exhibits numbered U. S. Exhibit 39, U. S. Exhibit 40, and U. S. Exhibit 41, and each of them, as will more fully appear as follows:

Mr. GILLIS.—In place of the two original checks I offer in evidence, may it please the Court, photostatic copy of check No. 301, and ask that it be introduced in evidence, the offer being made solely for the purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—We object to that on the ground that no proper foundation has been laid, it is not material, relevant or competent.

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 39.)

Mr. GILLIS.—I offer in evidence check No. 303 of Vincent Quartararo on the Bank of Italy, a photostat copy of the original, and ask that it be

introduced in evidence, it being introduced [589] for the sole purpose of furnishing an exemplar of Mr. Quartararo's handwriting.

Mr. COGHLAN.—The same objection.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

(U. S. Exhibit 40.)

Mr. GILLIS.—Have you the statement sheet with you for these particular checks which were delivered November 5, 1924, that were delivered to him—they are the statements of July 31, August 30, October 31, November 30.

A. You mean the signature card for the statements: Is that what you mean?

Q. Yes, that is what I mean. Is this the signature card for statements of Cincent Quartararo?

A. That is a receipt card.

Mr. COGHLAN.—We make the same objection and take an exception.

Mr. GILLIS.—I offer in evidence, may it please the Court, a photostat copy of the receipt card of Vincent Quartararo to the Bank of Italy, the sole purpose being to furnish an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—The same objection and exception.

(U. S. Exhibit 41.)

71.

The Court erred in admitting in evidence that certain U. S. Exhibit No. 42, as will more fully appear as follows:

Mr. GILLIS.—I now ask that a photostat copy

of this affidavit of registration be received in evidence, the sole purpose being for the purpose of furnishing an exemplar of the handwriting of Vincent Quartararo.

Mr. COGHLAN.—We offer the same objection, your Honor.

The COURT.—Objection overruled. [590]

Mr. COGHLAN.—Exception.

(U. S. Exhibit No. 42.)

72.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. How did you get in touch with him about that?

A. Well, one day he ring me up at my home and—

Mr. COGHLAN.—Just a minute. We object to this, if the Court please, as not material, relevant, or competent, and on the ground that no proper foundation has been laid.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

The COURT.—This is the man who has pleaded guilty, is it?

Mr. RIORDAN.—Yes, your Honor.

A. (Continuing.) —and he says he wants to see me at the cocktail place on Minna Street. When I went over there I don't see Vince, I see C. H.

73.

The Court erred in admitting in evidence certain

testimony over the objection of the defendants, as will more fully appear as follows:

Q. Who was there? A. The father of Vince.

Q. What did the father of Vince say?

Mr. FAULKNER.—If the Court please, we object to that as immaterial, irrelevant and incompetent, hearsay and not binding upon any person before the Court on the issues involved in this indictment.

The COURT.—Q. Was C. H. there at the time?

A. Yes, sir.

Q. And did he hear what Vincent's father said?

A. He says, "That is the man that my son rang up." [591]

Q. He said that to C. H.? A. Yes.

Q. "This is the man that my son rang up"?

A. Yes.

The COURT.—I will overrule the objection.

Mr. FAULKNER.—Exception.

74.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did he say, if anything?

Mr. FAULKNER.—I object to that as not binding upon any other defendant in this case.

Mr. COGHLAN.—And we object to it as hearsay and not material, relevant or competent, no proper foundation.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—Exception.

A. He said he wanted me to go to work outside. At first he says: "Have you got a job?" I said, "Yes." He says, "Do you want to go to work outside?" "What kind of work have you got?"

75.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—Q. As to the load that you were to bring ashore, did he tell you where you were to bring it? A. Yes.

Mr. GREEN.—Just a minute now. I object to this line of examination, and also I object to this question particularly on the ground that it is leading and suggestive.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

Mr. COGHLAN.—And of course I offer all the objections previously [592] urged, your Honor.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. RIORDAN.—Q. And where did he say?

A. Drakes Bay.

76.

The Court erred in denying the motion of the attorneys for the defendants to strike out the answer to the question propounded by the prosecution to their witness Marina Crivello upon direct examination as follows:

Q. And what boat did you go to, if any, when you went out on this errand?

A. I go to the "Malahat."

Mr. COGHLAN.—We now move that that be stricken out as not material, relevant or competent and having nothing to do with the issues here involved, and no foundation.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

77.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did you do with the 40 barrels of whiskey? A. I put them in my boat.

Q. Who did you see at the "Quadra"?

Mr. COGHLAN.—We offer the same objection to that.

The COURT.—The same ruling.

Mr. COGHLAN.—Exception.

A. I see the captain, the head man.

78.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows: [593]

Q. How did you know who to give it to at Drakes Bay?

Mr. FAULKNER.—That is objected to as immaterial, irrelevant and incompetent, and there is nothing in the record that he gave it to any person whomsoever.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. C. H. says "When you go to Drakes Bay ask for Joe."

79.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Which one? A. At the cocktail place.

Q. Did you get in touch with Vincent at the cocktail place?

Mr. COGHLAN.—That is leading and suggestive of an answer.

The COURT.—Let him answer; objection overruled.

Mr. COGHLAN.—Exception.

A. I saw C. H.

80.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. What did he say when you talked to him?

Mr. COGHLAN.—I object to that as hearsay, not material, relevant or competent, and no foundation.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. He said, "How much do you want"?

81.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows: [594]

Q. And did you finally get your money?

Mr. FAULKNER.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. He gave me $500 on the 28th day of January.

82.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Who gave that to you? A. Vince.

Mr. FAULKNER.—*No* we object to that if the Court please, as immaterial, irrelevant and incompetent, and a fact occurring subsequent to the indictment in this case, and not binding on any other defendant in this proceeding.

Mr. COGHLAN.—And we move that it be stricken out, may it please the Court, upon the same grounds.

The COURT.—That is not a statement, that is a specific act.

Mr. FAULKNER.—It is an act or transaction occurring with one of the alleged conspirators subsequent to the consummation of the conspiracy alleged in the indictment.

The COURT.—Yes, I know, but the rule of one binding the others must be covered by the instructions because in any event it would be binding upon Mr. Quartararo. The objection will have to be overruled.

Mr. RIORDAN.—And as to them, your Honor, I take it the conspiracy has not terminated, that the fruits of the transaction had not terminated.

The COURT.—That of course does not appear yet. I will cover it by instructions so that the other defendants will be protected.

Mr. COGHLAN.—And your Honor will allow the additional objection [595] that there is not any foundation?

The COURT.—Overruled.

Mr. COGHLAN.—Exception.

83.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Q. Did you also have a talk then with Vince about this payment?

Mr. FAULKNER.—The same objection.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

A. Sure.

84.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. RIORDAN.—Q. What did Vince have to say about it?

Mr. COGHLAN.—We offer the same objections that heretofore have been interposed; it is not material, relevant or competent, no proper foundation, and it concerns a time subsequent to the transactions referred to in the indictment.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

A. I would go and see Vincent Quartararo every week, every two weeks, every month.

Mr. COGHLAN.—I move that that be stricken out as not responsive to the question.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

A. (Continuing.) —And he kept telling me all the time, when the case was over with he would give me the money. [596]

Mr. COGHLAN.—We move that that be stricken out on the ground that it is not responsive, and is not certain as to dates, and it is not material, relevant or competent, and it has no proper foundation in the evidence.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

85.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. GILLIS.—Q. In your opinion, from an examination of these exhibits, who wrote the several pages upon which writing appears, the writing in that exhibit? In your opinion, who wrote it? (Referring to U. S. Exhibit 6.)

Mr. GREEN.—I also object to that on the ground that it was seized and is being used in violation of the rights of the defendants under the Fourth and Fifth Amendments to the Constitution; it is an attempt to make a man a witness against himself.

Other objections were made, as more fully appear in the bill of exceptions.

The COURT.—I think the objection would be good as to any of them so far as that particular paper is concerned. I will overrule the objection.

Mr. GREEN.—Exception.

A. The same person wrote this log, with the exception of the writing identified on the pages as one, two, three, four and so on, in red ink, and with the exception of the writing on page five, as signed the ship's articles, which are People's Exhibit 19, with the name "J. A. McLennan" followed by the words "Port Hastings, Vancouver, Coal Harbour." The writing in Government's Exhibit No. 6 to which I particularly refer is as follows: The [597] three lines on the upper right-hand corner of page one, all of the writing appearing in pencil on page two, all of the writing appearing in pencil on page three, all of the writing appearing in pencil on page 40, 41, 42, 43, 44 and 45.

86.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear, as follows:

Mr. GILLIS.—Q. Showing you Gevernment's Exhibit 17, after an examination of the several exhibits heretofore shown you, have you formed an opinion as to who wrote the entries in that book?

Mr. GREEN.—The same objection as heretofore made.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

A. Yes.

87.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. GILLIS.—Q. Mr. Heinrich, in your opinion

who wrote or printed the items on the back of the one dollar bills which go to make up Government's Exhibit 30?

Mr. COGHLAN.—We offer the same objection again, the proper foundation has not been laid, it is not material, relevant or competent and calls for the opinion of the witness upon a matter that he cannot—well, the bills are not in evidence, so far as that is concerned. There has been absolutely no foundation. There is nothing here to indicate—and that is one of the fundamental objections—that these bills were ever used in connection with any of these transactions with which your Honor [598] has become familiar through the lips of the witnesses who have been brought to the witness-stand here—absolutely nothing but a statement by the district attorney.

The COURT.—Objection overruled.

Mr. COGHLAN.—Exception.

Mr. FAULKNER.—We make the same objection that your Honor sustained a moment ago, that he cannot testify who wrote them, he can only testify that the handwriting that he has now and is examining is similar to certain other handwriting.

The COURT.—No, he can do no more than that. He can give his opinion with regard to the person who wrote it, if there are exemplars before the Court of the handwriting of that person. You may answer the question.

Mr. FAULKNER.—Exception.

A. They were written by the same person, written and printed by the same person who has

written the substance and signature of the exemplars Government's Exhibits 39 and 40, and who has written the name "V" or "Vincent Quartararo" as it appears on Government's Exhibits 38, 41, 42 and 37.

88.

The Court erred in admitting in evidence testimony concerning the handwriting on Government's Exhibits 33, 34, 30, 32, 31, as more fully appears in the bill of exceptions on file herein, and which are, and which each of them would be, similar to assignment No. 87.

89.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear, as follows:

Mr. COGHLAN.—Was there a limited purpose for their reception, for the purpose of comparison, or what? [599]

Mr. GILLIS.—You mean the bills?

Mr. COGHLAN.—The bills.

Mr. GILLIS.—The bills were received in evidence for all purposes.

Mr. COGHLAN.—We desire at this time, your Honor—and I think we need not object hereafter in addition to this—to object to the evidence which is now being adduced upon the ground it is not material, relevant or competent, on the ground that these bills have no foundation in the facts that have been up to this date adduced; that there is no evidence here which can be used as a predicate for their use in evidence in this manner, or, in fact,

we claim for their reception in evidence at all upon the general issue, because there is no evidence connecting them with any transaction affecting either the "Quadra" or the "Malahat" or any of the several small boats to which reference has been made here in the evidence, or any other source of intoxicating liquors claimed by the prosecution, and because these bills are in no way connected with any of the persons claimed as conspirators here, or claimed to be conspirators by the prosecution, or persons having to do with the conspiracy charged; and because they have not been shown to have been used in connection with any alleged conspiracy, or any of the operations here claimed by the Government, or to have been used at all by any persons here concerned as defendants, or any person unknown and claimed to be a conspirator, or in any manner to effect the purpose or object of the conspiracy alleged and claimed by the prosecution.

The COURT.—Objection overruled.

Mr. COGHLAN.—To which we reserve an exception.

90.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 51, which more fully appears as follows: [600]

Mr. GILLIS.—I now offer in evidence, may it please the Court, certified copies of the certificate to the Consolidated Exporters' Corporation, Ltd., notice of change of directors, dated December 1, 1924, showing a change as of June 2, 1924, the annual report of the Consolidated Exporters, Ltd.,

under the Companies Act to October 31, 1923, the annual report of the Consolidated Exporters, Ltd., to December 10, 1924, under the Companies Act of 1921.

These instruments are certified by H. G. Garrett, the Registrar of Companies.

The COURT.—Duly certified?

Mr. GILLIS.—In the same manner in which the one just received in evidence has been certified.

Mr. GILLIS.—I now offer these in evidence and ask that they be marked Government's exhibits next in order.

Mr. CROWLEY.—To the offer, if your Honor please, we object upon each of the following grounds severally and distinctly:

In addition to the objection that the indictment does not state facts sufficient to constitute any offense, we object on the ground that it is immaterial, irrelevant and incompetent, not within the issues, self-serving, hearsay, *res inter alios acto,* too remote from the time at issue, and not the best evidence.

There was and is no evidence showing or tending to show *prima facie,* or at all, the existence of the alleged conspiracy, or of any conspiracy, and there is no evidence showing or tending to show that we were or are connected therewith, had any knowledge thereof, or participated therein.

There is no evidence or foundation to connect us with the instrument offered, or that we are personally or otherwise or at all responsible therefor, par-

ticipated therein, or had any knowledge thereof, or that the same was made or kept under our [601] direction, or with any knowledge concerning the same or its contents.

No foundation therefore has been laid as to us.

(There was and is no foundation for the admission of this instrument in evidence.

There is no attestation or authentication thereof in due form of law, or as required by law, or at all; there was and is no warrant therefor under any federal statute, and no compliance with the requisites, if any, of the state statutes, if any.

The said instrument was and is incomplete and not entire, specifically among other things in this, that there is not contained therein the articles of association themselves issued, there is no evidence or certificate or attestation that the clerk or person mentioned was or is the legal custodian or keeper of said record, or of the original thereof, or had any right of custody thereof, or that said person had or has any authority to furnish any purported or authenticated copy thereof; there is no seal of the or any court annexed or attached to the purported certificate; there is no certificate of the Judge, or Chief Justice or presiding magistrate that the attestation purported to be made here is in due form.

It does not appear that the instrument is one which is authorized or provided for by the law of the land whence it comes; there is no proof of any foreign law or statute of such land, requiring such record or statement to be filed or recorded as an

official or other duty; there is no proof as to the force or effect or faith or credit, if any, said instrument has, if any, under said or any law or statute or usage in the courts of the place whence the instrument purports to come; nor is there any evidence or certificate under seal of the country or sovereign showing or tending to show that the same was or is a valid or [602] subsisting document of such country or land; there is no certificate under the seal of the said country or sovereign thereof; and the said purported consular certificate was or is not evidence herein, and the same was and is invalid being without the, or any of the, stamps required by law; there is no evidence that this purported copy is duly certified by the officer having the legal custody of the original, or what under the law of said country or land was or is due certification or attestation thereof; the instrument offered is not the record of any court and is nonjudicial in its character.

We are prepared to defend that objection, your Honor.

The COURT.—Let me look at it.

Mr. FAULKNER.—If the Court please, I think that, for the purpose of the Court in passing on this matter, Mr. Gillis, should indicate the purposes for which it is offered.

The COURT.—If you will let me look at it maybe I can find out.

Mr. CROWLEY.—What your Honor is looking at now is the memorandum of association.

The COURT.—The objection is overruled.

Mr. FAULKNER.—If your Honor please, before the ruling is made may this be included as a part of the objection, the very cogent objection that it is immaterial, irrelevant and incompetent, the corporation set forth in the instrument not being a party to the conspiracy, not being connected by any evidence of conspiracy; and particularly on behalf of the defendant Belanger that there is no evidence in the record or offered in evidence that he was a director or had anything to do with the corporation at any time claimed in the indictment that a conspiracy existed.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

Mr. CROWLEY.—We note an exception, your Honor. [603]

(U. S. Exhibit No. 51.)

91.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 52, which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence, your Honor, a certified copy of the report outwards from the port of Vancouver, British Columbia, of the steamship "Quadra," dated September 9, 1924.

Mr. CROWLEY.—We make the same objection we have heretofore made, your Honor, being the last objection I personally made to the last offer.

Mr. FAULKNER.—The same objection in its entirety, and the further objection that it is full of erasures and several kinds of handwriting.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

(U. S. Exhibit No. 52.)

92.

The Court erred in admitting in evidence that certain document marked U. S. Exhibit 53, and which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence, may it please the Court, the report outwards from the port of Vancouver, British Columbia, of the auxiliary schooner "Malahat," May 23, 1924, duly certified as the other exhibits offered are certified.

Mr. CROWLEY.—We make the same objection as heretofore specifically and at length made to Exhibit No. 51.

Mr. FAULKNER.—We desire to supplement that, your Honor, the steamer "Malahat" is not a party to this conspiracy, and the evidence contained therein can only be binding upon certain of the defendants that are connected with the "Malahat," and it [604] would be immaterial, irrelevant and incompetent and the proper foundation not laid as to any other defendant, particularly the officers and members of the crew of the "Quadra" and the defendant Belanger.

The COURT.—Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—And also all of the other defendants.

Mr. COGHLAN.—We reserve an objection.

(U. S. Exhibit No. 53.)

93.

The Court erred in admitting in evidence that

certain document marked U. S. Exhibit 54, and which more fully appears as follows:

Mr. GILLIS.—I now offer in evidence the report outwards from the port of Vancouver, British Columbia, dated July 5, 1924, of the steamship "Coal Harbour."

Mr. CROWLEY.—The same objection we have made at length to Exhibit No. 51.

The COURT.—Was there any evidence, Mr. Gillis, that any of these small boats transferred any liquor from the "Coal Harbour"?

Mr. GREEN.—No, your Honor.

Mr. GILLIS.—In connection with the "Coal Harbour" I simply wish to call your Honor's attention to this fact: That the records of McLennan's log, which have been admitted in evidence, of date October 6, reads as follows: "Steamer 'Coal Harbour' in sight about ten a. m., transferred 232 cases Gordon Gin in boats from 'Coal Harbour.'"

The COURT.—Yes. Objection overruled.

Mr. CROWLEY.—Exception.

Mr. FAULKNER.—Exception.

(U. S. Exhibit No. 54.) [605]

94.

The Court erred in overruling the motions of the defendants to strike out certain of the evidence, as will more fully appear, as follows:

Mr. FAULKNER.—I, at this time, on behalf of all of the defendants, jointly and severally, move the Court to strike from the evidence Exhibits 3, 4, 5, photos of the "Quadra," Exhibit No. 6, the

log of the "Quadra," photos 8 to 15, inclusive, of the "Quadra," the slip signed by some person whose handwriting could not be identified, Exhibit 17, the mate's log—

The COURT.—It is not the mate's log, at all; it is the engine-room log. It is headed that way. As a matter of fact, it is the engine-room log.

Mr. FAULKNER.—That is the manner in which they offered the record.

The COURT.—I understand what you mean.

Mr. FAULKNER.—The certificate of registry, the ship's articles, the sacks of liquor, Exhibits 20 and 21, the kegs of liquor, Exhibits 22 and 23, the box of liquor, Exhibit 24, order for box, Exhibit 25, tags, Exhibit 26, tag Exhibit 27, Exhibits 30 to 36, inclusive, the currency bills, and all of the exhibits showing large photostat copies of handwriting in connection with any book, document, or instrument seized from the "Quadra." The motion to exclude that particular evidence, if your Honor please, is based upon the announcement of the Court at the time that all of that evidence was permitted to go into the record subject to being connected up, on the theory that a conspiracy must be shown before any of the evidence would be admissible; on the further ground that as to the defendants, officers and members of the crew of the "Quadra," the exhibits referred to, taken from the "Quadra," were seized in violation of the rights of the said defendants under the Fourth and Fifth Amendments, that they were seized pursuant to an [606] illegal arrest of these defendants, and should not, under any circumstances, be admissible in evi-

dence. I supplement the grounds of this motion in particular by all of the grounds urged to your Honor on the motion to suppress and exclude evidence.

Now, then, the Court will, in that regard, have in mind that under the law the seizure of the "Quadra" could only take place at a distance that could be traversed by some vessel with which the "Quadra" was dealing, that could travel the distance from the point of seizure to the North Farallones in one hour, and the record affirmatively shows in this case, if the Court will permit me to indicate it to you, that the "C–55" was the only vessel that got in that position, but it has not been affirmatively shown that the "C–55" was a vessel intended for use in conveying liquor to the United States. The record affirmatively shows in this case that the "C–55" was transferring liquor from the "Coal Harbour" to the "Quadra." There is not in the record any evidence that any vessel with which the "Quadra" was dealing could have traversed the distance from the place of seizure to the "Quadra," or the place at which they dealt with the "Quadra" in less than one hour. Furthermore, the record in this case does not affirmatively establish that assuming that the "C–55" was dealing with the coast of the United States, that it could have, under the circumstances, presented in the record, traversed the distance from the point of seizure of the "Quadra" to the North Farallones in one hour. We respectfully submit that the burden was upon the Customs

Revenue Agent, at the time of the seizure of the "Quadra," if they depended upon the speed of the "C–55" to have at that time, and under those circumstances, traversed the distance from the point of seizure of the "Quadra" to the North Farallones; it was [607] quite within their power to do so, and their failure so to do leaves this Court without jurisdiction to consider all of the evidence seized, as I have indicated, and as the record discloses, from the "Quadra" under these circumstances; and I respectfully ask the Court to suppress all such evidence, and direct the jury to disregard it.

The COURT.—Motion denied.

Mr. FAULKNER.—Exception.

95.

The Court erred in overruling the motion of the defendants requesting the Court to direct the jury to acquit the defendants, as more fully appears as follows:

Mr. FAULKNER.—At this time, if your Honor please, I move the Court on behalf of the officers, master and members of the crew of the "Quadra," and defendant Belanger, jointly and severally, to acquit the defendants, and all of them, that I have mentioned. Said motion is based upon the following grounds:

First. The indictment No. 15,914 does not state facts sufficient to constitute a cause of action; particularly directing the Court's attention that this is a conspiracy to violate the Tariff Law, the language of which law reads, that any person who

imports merchandise into the United States contrary to law is guilty of an offense, and the law which it is claimed they violated has never been brought to their attention by indictment, or by the district attorney—never brought to the attention of any of these defendants. The venue as to the defendants officers, master and members of the crew has not been shown.

Second. The Court has not now, and never has had at any stage of this proceeding jurisdiction of the persons of said defendants, or either of them.

Third. The Court has not jurisdiction as to these moving [608] defendants of the subject matter of the offense pleaded or attempted to be pleaded in this indictment, or of the conduct of these moving defendants at all.

Fourth. The *corpus delicti* of the offense has never been established.

Fifth. There is nothing in the record showing a conspiracy and/or an unlawful combination of any kind to violate the laws of the United States.

Sixth. There is nothing in this record showing a conspiracy and/or an unlawful combination of any kind to violate the National Prohibition Act, and particularly the portions thereof set forth in the indictment, and/or Sections 593a and/or 593b of the Tariff Act of 1922, and/or the treaty of May, 1924, between the United States and Great Britain.

Seventh. All and each part of the evidence of overt acts were improperly admissible at the time of receipt.

Eighth. All and each part of the evidence concerning overt acts have not been nor has any part of it been connected up by laying the foundation, viz., the existence of a conspiracy.

Ninth. All and each part of the evidence concerning overt acts have not nor has any part of it been connected up by any foundation at all.

Tenth. All evidence and each part thereof introduced as a result of the seizure of the "Quadra" was illegally admitted and in contravention of the rights of these moving defendants, and each of them, under the Fourth and Fifth Amendments to the Constitution of the United States.

Eleventh. Section 37 of the Criminal Code, under which these defendants and each of them are charged has no application at the place where all acts concerning them were by them committed, at a point admittedly beyond the three-mile limit on the coast line of the United States. [609]

Twelfth. The National Prohibition Act, and particularly the parts thereof pleaded in this indictment, and the Tariff Act of 1922, and the sections pleaded in this indictment, have not nor has either of them application beyond the territorial limits of the United States, namely three miles, or a marine league from the coast line thereof.

Thirteenth. The treaty between Great Britain and the United States completely supersedes the application of the National Prohibition Act, and the sections pleaded in the indictment, and the tariff Act of 1922, and the sections pleaded in the

indictment, and each and every part of each of said acts, and under said treaty the right to arrest and/or criminally or otherwise prosecute officers and members of a ship of British registry is not given.

As to the defendant Belanger, we move, in addition to the foregoing grounds, that there is no evidence of his knowledge of any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of his participation in any of the acts testified to having been done and performed by the "Quadra."

That there is no evidence of the defendant Belanger having knowledge of the performance of any illegal act by the "Quadra."

That there is no evidence that the defendant Belanger participated in any legal act by the "Quadra."

That there is no evidence of Defendant Belanger having knowledge and/or participation in any crime or conspiracy whatsoever.

That there is no evidence of Defendant Belanger having knowedge and/or participation in the crimial offense set out or attempted to be set out in this indictment.

If the Court please, in indicating the grounds of the motion, I do not know whether I indicated that one of the grounds was that [610] the evidence was insufficient to justify and/or support a verdict; if I did not, I ask that that might be considered as one of the grounds on behalf of each and all of the defendants.

The COURT.—Before the argument goes further, Mr. Faulkner, I am not sure that your motion covers all of the defendants, does it?

Mr. FAULKNER.—My motion covers the master, officers and members of the crew of the "Quadra," which are the first 22 men named in the indictment; my motion is primarily as to them. I also addressed a motion on behalf of the defendant Belanger.

The COURT.—The motion will be denied.

Mr. FAULKNER.—Exception.

96.

The Court erred in overruling the motion of the defendant Quartararo to strike certain evidence from the files, as more fully appears as follows:

Mr. COGHLAN.—If your Honor please, the defendant Vincent Quartararo at this time desires to move to strike from the record and from the consideration of the jury certain exhibits and certain testimony relating to and affecting exemplars of hand writing offered and admitted here, together with certain packages of United States one dollar bills that are before you. I believe, as nearly as I can gather from my notes, that this motion refers primarily to exhibit 37, a photostatic copy of the articles of incorporation introduced here through the testimony of Mr. Milton M. Davis; I move that that be stricken from the record.

Exhibit 41, a photostatic copy of a receipt card of Vincent Quartararo at the Bank of Italy which came in under the testimony of E. J. Casey, if I remember right.

Also exhibit 42, which I believe consists of certain checks, [611] if I remember correctly, bearing a signature of a person named Vincent Quartararo; at any rate, it is exhibit 42, and they all bear upon the same subject.

And exhibits 39 and 40, and exhibits 38, 41, 33, 35, 36 and 31—these are all Government exhibits and they all relate to the matter to which I have called your Honor's attention. I say that so that I may intelligently refer to them.

The COURT.—Those are the different packages of bills. And also all the testimony of E. O. Heinrich offered here as an expert on handwriting affecting those exhibits. I offer that motion, your Honor, upon the ground that they have not been in any way identified with the transaction or transactions stated or pleaded in the indictment or with the conspiracy therein described, or with any conspiracy whatsoever or with any violation of the National Prohibition Act, or the Tariff Act of 1922, or with the operations of the "Quadra," evidence of which was taken here, or of the "Malahat" or any of the motor boats named in the evidence by the witnesses here or with the alleged operations of any of the witnesses who have testified, or that they were ever connected with or ever used at all on any of the criminal or alleged or claimed criminal operations contemplated by these proceedings, or that they were in any way connected with any transaction having to do with the conspiracy charged or the persons charged here in the indictment or with any other persons named

as unknown, or with the events or things here testified to by the several witnesses who touched upon those matters, or that they themselves, meaning the bills furnish any evidence of an identity of operation, that is to say, furnish any evidence that they were used in any of the operations claimed to have been criminal and here adverted to by witnesses or counsel, or that they give any evidence of belonging to any transaction having to do with any of the charges here set out in the indictment; and, furthermore, that they do give evidence [612] upon their face, in connection with other things in the record, of having to do with other and distinct and separate transactions from anything which it is claimed transpired in connection with this conspiracy; and that they do not in any way form a bridge or connection between Vincent Quartararo and the conspiracy here charged or attempted to be proved.

The COURT.—The motion is denied.

Mr. COGHLAN.—We reserve an exception.

97.

The Court erred in denying the motion of the defendant Quartararo to direct the jury to acquit said defendant, as will more fully appear, as follows:

Mr. COGHLAN.—And now I want to adopt a motion that was made by Mr. Faulkner and to add to it the observations made in my objection; I move for an instructed verdict upon the ground that Vincent Quartararo has in no way been connected with the commission of the conspiracy set

out in this indictment, or any offense punishable under this indictment.

The COURT.—Motion denied.

Mr. COGHLAN.—Exception.

98.

The Court erred in admitting in evidence certain testimony over the objection of the defendants as will more fully appear as follows:

Q. Of course, you did not have the slightest idea that she might have been a rum runner when you saw her? A. No.

Mr. GREEN.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. GREEN.—Exception. [613]

99.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. GREEN.—Q. Mr. Harris, when you were off the coast of the United States, and particularly off the Coast of San Francisco, and took part, under the captain's orders, in assisting in the unloading of liquor into small vessels, did you know you were violating in any way any law of the United States?

Mr. GILLIS.—Just a minute. I object to the question on the ground that it is leading and suggestive, and putting the answer right into the witness' mouth. It is not proper redirect examination.

Mr. FAULKNER.—What answer is he putting in his mouth?

Mr. GILLIS.—Address your remarks to the Court.

The COURT.—It is entirely immaterial whether he knew it or not.

Mr. FAULKNER.—We submit that it is material, your Honor, in this proceeding.

The COURT.—I cannot agree with you. The objection is sustained.

Mr. GREEN.—A citizen of a foreign country is not presumed to know the law.

The COURT.—Everybody is presumed to know the law—except lawyers.

Mr. GREEN.—We take an exception to the ruling, your Honor.

100.

The Court erred in admitting in evidence certain testimony over the objection of the defendands, as will more fully appear as follows:

Q. But at the time that you participated, either directly or [614] indirectly in the unloading of part of the cargo of the "Quadra" into small boats in that position, did you know that you were in any way violating any law of the United States?

Mr. GILLIS.—The same objection to that as was made to a similar question asked the witness Harris.

The COURT.—The objection is sustained.

Mr. GREEN.—Exception.

101.

The COURT erred in admitting certain testimony over the objection of the defendants, as will more fully appear as follows:

Mr. RIORDAN.—I offer this Western Union telegram of the date indicated, May 27, 1924, for identification.

Mr. FAULKNER.—We make the same objection (immaterial, irrelevant and incompetent, and no foundation laid).

The telegrams were stipulated to be in the handwriting of Defendant Belanger, and thereupon, over objection of defendants, were read to the jury. The particular telegrams referred to are dated, respectively, May 27, and two of date May 28, all in 1924.

102.

The Court erred in admitting in evidence certain excerpts from the machinery log of the "Shawnee," as will more fully appear as follows:

Mr. GILLIS.—I ask that that part of the machinery log of the "Shawnee" for October 12, headed, "Midnight to 8 A. M.," signed by R. N. Williams, Machinist, be introduced in evidence. I ask to read it into evidence, in order that the record may not be encumbered with the whole book.

Mr. FAULKNER.—We object to that as immaterial, irrelevant and incompetent, and an effort on the part of the prosecution to impeach the testimony of a witness on a matter collateral to [615] the issue concerning which he was cross-examined. Your Honor will have in mind that the sailor from the "Shawnee" testified to the taking of a sounding in the afternoon. Matters developed on cross-examination concerning from midnight of the preceding day to 8 A. M. are collateral matters, and

the impeachment of that witness concerning them would be immaterial, irrelevant and incompetent, not proper impeachment, and an effort to impeach a man on a collateral matter.

Mr. GILLIS.—The movements of the "Shawnee" from the moment she left Drakes' Bay until the "Quadra" was seized is all part of the case.

Mr. FAULKNER.—That was not a part of the evidence of the man you are attempting to impeach.

The COURT.—Objection overruled.

Mr. FAULKNER.—Exception.

103.

The Court erred in admitting in evidence certain testimony over the objection of the defendants, as will more fully appear as follows:

Q. Do you know who your water-tender was?

A. I do.

Mr. GREEN.—That is objected to on the ground that it is not proper rebuttal.

The COURT.—Objection overruled.

Mr. GREEN.—Exception.

Mr. GILLIS.—Q. Who was it?

A. Schybinger.

104.

The Court erred in denying at the conclusion of the case the motion of defendants to suppress certain evidence, as more fully appears hereafter, and the motion for a directed verdict which more fully appears hereafter:

Mr. FAULKNER.—At this time, if the Court please, on behalf [616] of all the defendants, jointly and severally, I move for the suppression

of all of the exhibits, made at the time of the close of the prosecution's case. If the Court will permit it, and if agreeable to Mr. Gillis, may the motion to suppress the evidence, in which I referred to all the exhibits, be considered as renewed and made at this time?

Mr. GILLIS.—Certainly, that is perfectly agreeable.

Mr. FAULKNER.—I would like to supplement that particular motion, if the Court please. I would ask the Court at this time, both sides having rested, to exclude from the record the evidence concerning the speed of the "C–55." At the time of the admission of that evidence in the record the Court will recall a legal objection was made to its introduction. I do not desire, unless the Court desires me to, to indicate the legal proposition that was involved in that objection, which was ruled on at that time—

The COURT.—It is considered as made upon the same ground, Mr. Faulkner.

Mr. FAULKNER.—Yes, your Honor. At the time you permitted that evidence to go in, the Court indicated as follows:

"Of course, Mr. Green, that is, again, a question of the order of proof, but, of course, if it be not shown that the vessel was engaged in the business of conveying liquor there may be something to that; you can renew the objection at the proper time. For the present it is overruled."

There is nothing in this record that the "C–55"

was ever intended as a ship to convey liquor to the shores of the United States.

The only evidence in that regard is that the ship was actually taken by the "Shawnee" to the United States, and at the time of its seizure it was declared to be a ship engaged in the transfer of liquor between two vessels on the high seas. The Court [617] cannot infer, in the absence of direct evidence, against the only presumption that exists in a criminal case, the presumption of innocence, that they were engaged in a criminal enterprise as set forth in the indictment.

In addition to that, if the Court please, I desire again, on behalf of each and every defendant, jointly and severally, and the motion may be, I take it, considered to be made on behalf of each defendant individually, as well as jointly, that the Court at this time instruct the jury to acquit the defendants, each and every, all and singular the defendants present under this indictment; that motion will be based upon all of the grounds set forth in the motion for a directed verdict directed to the Court's attention at the time of the conclusion of the prosecution's case, as though I again read it in full; may that be stipulated, Mr. Gillis?

Mr. GILLIS.—Yes, certainly.

Mr. FAULKNER.—The first reason being that the evidence is insufficient as to each and every, and all and singular the defendants, jointly and severally, to warrant, or upon which the Court could base, or the jury could base, a conviction. I know with what thoroughness the Court has con-

sidered this matter at a prior time, and I think that the matter was presented with some degree of thoroughness on the part of the defendants; if the Court desires any additional thoughts that I have on the subject presented here at this time I will be pleased to do it; particularly one authority of the Supreme Court of the United States, which holds that a charge of conspiracy outside of the territorial limits of the United States cannot be had under the laws of the United States.

The COURT.—The motions are both denied.

Mr. FAULKNER.—Exception as to all the defendants, jointly [618] and severally.

105.

The Court erred in determining that the question of jurisdiction involved and the ship's position involved were questions for the Court, rather than questions for the determination of the jury, to which ruling defendants duly excepted. Reference is hereby made to the bill of exceptions for the particulars in this regard, for the reason that the discussion consumes fifteen or twenty pages, and it is respectfully requested that the entire record of the bill of exceptions be deemed a part of this assignment of error. In the Court's finding it said;

"The Court will find that the ship was seized within the limit provided by the treaty with Great Britain."

Mr. GREEN.—To which ruling we respectfully note an exception, and also to the Court's remarks.

106.

The Court erred in refusing to permit argument

on the question of the ship's position, as will more fully appear as follows:

Mr. GREEN.—Of course, your Honor has decided the question, but will you hear any argument on the question of the position of the ship?

The COURT.—I don't think I care to, Mr. Green. I am satisfied on that point.

Mr. FAULKNER.—If the argument, your Honor, were merely directed to the Government's case?

The COURT.—I understand that, Mr. Faulkner, and I have ruled on it. I don't care to hear any further argument.

Mr. FAULKNER.—Exception. [619]

107.

The Court erred in permitting the reopening of the case of the prosecution to admit in evidence the telegram in words and figures as follows:

"RUSH WIRE.

San Francisco, June 24/24.

"Geo. Norgan,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.

"Merchandise not yet reached market. Therefore cannot report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H."

over the objection of counsel for the defendants, to which reopening of the case counsel objected and

duly excepted to the Court's ruling; the objections and the dialogue consumed some ten pages of the transcript, and, therefore, reference is made to the bill of exceptions to show the transaction in this regard.

108.

The Court erred in admitting the telegram referred to in assignment 107 over the objections of the defendant, as follows:

Mr. RIORDAN.—I now offer in evidence the telegram heretofore admitted for identification.

Mr. FAULKNER.—I object to that, if the Court please, as immaterial, irrelevant and incompetent, and truly no foundation has been laid. There is no evidence whatever as to the identity of the sender of this telegram. The notation made by the young lady at the time of sending does not indicate that the person sending is the person whose name is written; it is merely the address that she wrote of some person who has not been identified. To get this telegram properly in evidence, there should be an identification of the person that sent it.

The COURT.—Objection overruled. [620]

Mr. FAULKNER.—Exception.

109.

The Court erred in overruling the renewed motions concerning the suppression of evidence and for a directed verdict, as will more fully appear, as follows:

Mr. FAULKNER.—I think it is the duty of the defendants to again renew all motions made at the original conclusion of the case by both sides. If

you will stipulate, Mr. Gillis, that the motions to suppress evidence and the motions for directed verdicts may be considered to have been again made in full form, I think that will meet our requirements.

Mr. GILLIS.—That is perfectly agreeable to the Government, and we will so stipulate.

The COURT.—Yes. Motions denied.

Mr. FAULKNER.—Exception.

Mr. COGHLAN.—An exception on behalf of all the defendants, your Honor?

The COURT.—Yes, an exception for all the defendants.

110.

The Court erred in denying defendants' and each of their motions for a new trial, to which ruling the defendants then and there duly excepted.

111.

The Court erred in denying defendants' and each of their motions in arrest of judgment, to which ruling the defendants and each of them then and there duly excepted.

112.

The Court erred in overruling the demurrer of the defendants, and each of them, to the indictment herein, to which ruling defendants, and each of them, duly excepted. [621]

113.

The Court erred in denying the motion of the defendants, and of each of them, to quash the indictment therein, to which ruling the defendants, and each of them, then and there duly excecpted.

114.

The Court erred in denying the motion of the defendants, and each of them, to suppress evidence, made by them prior to the trial, to which ruling the defendants, and each of them, then and there duly excepted.

115.

The Court erred in instructing the jury as follows:

Now, Gentlemen, these men are charged with having entered into a conspiracy to violate certain laws of the United States. One of those laws forbids the importation of liquor into the United States in the manner in which it is charged liquor was brought in here, and without payment of the duty; in other words, what is known as the Tariff Act of 1922.

The other law is commonly known as the National Prohibition Act, which prohibits the importation into this country, the sale, the possession and the transportation of intoxicating liquor fit for beverage purposes and containing more than one-half of one per cent of alcohol by volume.

To the giving of which instruction defendants, by their counsel, then and there duly excepted.

116.

The Court erred in instructing the jury as follows:

The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under

the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real [622] intent and purpose of the shipping of the liquor by various vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

It is then charged that in effect Captain Ford, the chief officer Mr. Harris, the second officer Mr. Evelyn, and members of the crew of the "Quadra" loaded upon that vessel a large quantity of intoxicating liquor the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment.

To the giving of which instruction defendants by their counsel then and there duly excepted.

118.

The instructions of the Court to the jury relative to officers and members of the crew, which eliminated from consideration [623] the questions of jurisdiction, which had been thoroughly announced to the Court at various stages of the trial, were excepted to for their failure to embody the position advanced by defendants concerning the jurisdiction and the position of the "Quadra"; to the giving of which instructions defendants, by their counsel, then and there duly excepted.

119.

The Court erred in refusing the request of the defendants George Ford, George Harris, J. Evelyn and Charles Horace Belanger, and each of them, to give the following instructions, and each of them, and said defendants and each of them predicate error on the failure to give each of said instructions, and to which ruling of the Court said defendants and each of them then and there, through their counsel, duly excepted, and which instructions, for convenience, will be referred to hereafter by the numbers under which they were proposed to the Court.

INSTRUCTION No. 1.

I instruct you that the evidence in this case is insufficient to warrant a conviction of the defendant George Ford, and you are therefore instructed to return a verdict of not guilty as to the defendant George Ford.

Instruction No. 1a, Instruction No. 1b, and Instruction No. 1v were in the same form as Instruction No. 1, except that the names of defendants George Harris, J. Evelyn, and Charles Horace Belanger were substituted in the proposed instruction by them in the place of the name George Ford appearing about.

INSTRUCTION No. 33.

I charge you that the steamer "Quadra" was a private vessel under the British flag. [624]

INSTRUCTION No. 34.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendants, master, officers and members of the crew of the steamer "Quadra" shall be not guilty.

INSTRUCTION No. 35.

I charge you that it is an admitted fact in this case that all acts and transactions on the part of the master, officers and crew of the "Quadra" were done and performed by them on the high seas at a distance from the coast of the United States, its territories and possessions greater than three miles or a marine league; therefore, your verdict in this case as against defendant Belanger shall be not guilty.

759

INSTRUCTION No. 36.

I charge you that if you believe from the evidence in this case that the steamer "Quadra" never came within a marine league or three miles from the coast line of the United States, its territories or possessions, then your verdict as to the master, subordinate officers and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 37.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the master, subordinate officers and members of the crew of the steamer "Quadra" came within three miles or a marine league of the coast of the United States, its territories and possessions at or during the time of the existence of the claimed conspiracy then your verdict as to each of said officers, members of the crew and master shall be not guilty. [625]

INSTRUCTION No. 38.

There is no evidence in this case that the "Quadra" was a vessel intended to bring liquor into the United States.

INSTRUCTION No. 39.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seixed within a distance from the coast of the United States, its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra"

to the United States, then your verdict as to the master, officers and members of the crew of the "Quadra" and each thereof shall be not guilty.

INSTRUCTION No. 40.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States its territories or possessions which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence entroduced fendant Belanger shall be not guilty.

INSTRUCTION No. 41.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or possessions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed and you are to disregard the same as to the officers, members and master of the "Quadra." [626]

INSTRUCTION No. 42.

I therefore charge you that unless the Government has shown to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" was boarded and seized within a distance from the coast of the United States, its territories or posses-

sions, which could be traversed in one hour by some other vessel intended to convey liquor from the "Quadra" to the United States, then all evidence introduced in this case obtained on the "Quadra" is suppressed, and you are to disregard the same as to the defendant Belanger.

INSTRUCTION No. 43.

I charge you that in order to find the master, officers and members of the crew of the steamer "Quadra" guilty, the Government must show to a moral certainty and beyond a reasonable doubt that the steamer "Quadra" at the time of its seizure was within an hour's sailing distance of some vessel other than the "Quadra," which was intended to convey liquor to the United States, its territories and possessions.

The burden therefore rests upon the Government to establish to a moral certainty and beyond a reasonable doubt that the "C–55" was a vessel intended to convey liquor from the "Quadra" to the United States, its territories or possessions; the Government must further establish to a moral certainty and beyond a reasonable doubt that the "C–55" could have traversed the distance between the place of seizure of the "Quadra" to the North Farallone in one hour, laden as it was and having in mind the water to be traversed and the condition of wind, weather and current.

INSTRUCTION No. 44.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one

ship to another on the [627] high seas, your verdict as to the defendants masters and members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 45.

I charge you that if you believe from the evidence that the "C–55" was transferring liquor from one ship to another on the high seas, your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 46.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States Possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the master, officers and members of the "Quadra" shall be not guilty.

INSTRUCTION No. 47.

I charge you that evidence has been adduced on behalf of the defendants that the steamer "Quadra" at the time of its seizure was more than 13 miles to the North Farallone, the nearest of the United States possessions.

If you believe said evidence, or said evidence creates a reasonable doubt in your mind as to the position of the "Quadra," your verdict as to the defendant Belanger shall be not guilty.

INSTRUCTION No. 48.

I charge you that under the law, the officers sub-

ordinate to master and members of the crew of the "Quadra" were bound to obey the lawful commands of the master of said vessel.

INSTRUCTION No. 49.

There is evidence in this case that the "Quadra" delivered liquor to other vessels. I charge you that you cannot infer from [628] this evidence that all of the officers and members of the crew of the "Quadra" participated in such delivery. The burden rested upon the Government in this case to prove to a moral certainty and beyond a reasonable doubt as to each officer and as to each member of the crew that they participated in a conspiracy with knowledge thereof.

INSTRUCTION No. 50.

I charge you that unless the Government has established to a moral certainty and beyond a reasonable doubt that the acts done and performed by the members of the crew and subordinate officers of the master of the "Quadra," were done and performed with an intent to violate the laws of the United States as distinguished from obedience to the orders of the master of the "Quadra," your verdict as to the members of the crew of the "Quadra" shall be not guilty.

INSTRUCTION No. 51.

I charge you that in order to find the subordinate officers and members of the crew of the "Quadra" guilty of the offense charged in the indictment, the Government must establish to a moral certainty and beyond a reasonable doubt that

each subordinate officer and member of the crew that you find guilty actually participated in an attempt to violate the laws of the United States with knowledge at the time of participation that the laws of the United States were attempted to be violated.

INSTRUCTION No. 52.

I charge you that if you find from the evidence in this case that all acts done and performed by the officers subordinate to the master and members of the crew of the "Quadra" were done and performed by them at a point greater than three miles or a marine league from the coast of the United States, its [629] territories or possessions, your verdict as to said members of the crew and each thereof and said subordinate officers and each thereof shall be not guilty.

INSTRUCTION No. 53.

I charge you that the proof that certain of the defendants were officers and members of the crew of the "Quadra" is not, standing alone, sufficient to warrant a conviction of said defendants or either of them.

INSTRUCTION No. 54.

I charge you that each member of the crew and each officer of the "Quadra" is entitled to have the evidence against him weighed and determined under the rules laid down by the instructions given and to be given by the Court.

INSTRUCTION No. 55.

With respect to the officers and members of the

crew of the "Quadra" and each thereof, I charge you that participation in an act a part of a conspiracy, without knowledge of its existence, or knowledge of the conspiracy without participation therein, is not sufficient to warrant a conviction.

INSTRUCTION No. 56.

I charge you that if you find from the evidence in this case that any defendants members of the crew and officers subordinate to the master of the "Quadra" participated in delivering and unloading liquor from the steamer "Quadra," to other vessels pursuant to the orders of the master at a point more than a marine league or three miles from the United States, its territories or possession, and said members of officers and crew or either of them, did not have knowledge that said "Quadra" was within an hour's sailing distance of the vessels with which it was dealing from the coast line of the United States, its territories or possessions, and did not have an intent to [630] violate any law of the United States, I charge you that your verdict as to such officers and members of the crew and each thereof shall be not guilty.

INSTRUCTION No. 57.

I have instructed you as to the facts which the Government must establish as to a moral certainty and beyond a reasonable doubt in order to find the members of the crew and officers of the steamer "Quadra" guilty. I further charge you in this connection that every fact which I have instructed you that you must find, you must find as to each

member of the crew and as to each officer of the steamer "Quadra."

INSTRUCTION No. 58.

I charge you that the only evidence in this case connecting defendant Belanger with the commission of the offense charged in the testimony of accomplices.

INSTRUCTION No. 59.

I charge you that you should exercise care and caution in viewing the testimony of accomplices and that before a conviction be based thereon, such testimony should be convincing proof of the guilt of the accused.

INSTRUCTION No. 60.

In considering the testimony of accomplices I caution you about accepting such evidence without material corroboration, coming as it does from a polluted source.

INSTRUCTION No. 61.

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point.

INSTRUCTION No. 64.

I charge you that unless you find from the evidence that [631] the subordinate officers and members of the crew of the "Quadra" at the time of the signing of the ship's articles or before the actual embarkation of the "Quadra" on the voyage indicated in the evidence, had knowledge that it

was the purpose of the voyage to unload the cargo contained in the "Quadra" at a place other than its apparent designation, your verdict as to each of said subordinate officers and members of the crew of the "Quadra," shall be not guilty.

INSTRUCTION No. 65.

I charge you that if the acts and conduct of the master, subordinate officers and members of the crew of the "Quadra," or as to them or either of them, as consistent with their innocence of the offense charged in the indictment as with their guilt, then it is your bounden duty to acquit said defendants and all of them, or either of them, as to whom you shall so find.

INSTRUCTION No. 66.

I charge you that if the acts and conduct of the defendant Belanger depicted in the record is as consistent with the innocence of said defendant Belanger, as to the offense charged in the indictment as with his guilt, it is your duty to acquit the said defendant Belanger.

INSTRUCTION No. 67.

I charge you that if you believe from the evidence in this case that the subordinate officers and members of the crew of the "Quadra" were not conscious participants in this alleged conspiracy, if it was a conspiracy, then you must return a verdict of not guilty as to said subordinate officers and members of the crew of the "Quadra."

INSTRUCTION No. 68.

I charge you that if you believe from the evidence

in this [632] case that the subordinate officers and members of the crew of the "Quadra," acting in good faith, supposed that the "Quadra" was going to Mexico and not to this country, then they ought not to be convicted.

INSTRUCTION No. 69.

I charge you that the subordinate officers and members of the crew of the "Quadra" were mere servants or employees of the boat and that their acts should be considered by this jury, keeping that fact in view, and if you do not believe beyond a reasonable doubt, that they were conscious participants in the conspiracy, if there was one, then you ought to acquit them.

INSTRUCTION No. 70.

If you find from the evidence that the acts or any one of them charged by the Government in the indictment, or shown by the evidence, to have been committed by the defendants comprising the subordinate officers and members of the crew of the "Quadra" were committed by said defendants and were so committed and performed by said defendants, solely and simply as employees, servants, or agents or other persons and were performed by said subordinate officers and members of the crew without any common design, purpose or understanding on the part of said subordinate officers and members of the crew with any other persons charged in said indictment, then I instruct you that the said defendants, subordinate officers and members of the crew of the "Quadra," cannot be considered conspirators and must be acquited.

INSTRUCTION No. 71.

I charge you that where it is within the power of a party to produce a witness and such a witness is not produced, a presumption arises that the testimony of such witness not produced but available would be adverse to the party failing to produce the witness. [633]

INSTRUCTION No. 72.

If you believe from the evidence in this case that defendant Ford, Master of the "Quadra" delivered liquor to other persons with the belief at the time that the delivery by him and that all of his acts and conduct in connection therewith were without intent on his part to violate any law of the United States, and that he was of the belief that his acts and conduct were legal at the time of the performance by him, then I instruct you that as to said defendant Ford, master of the "Quadra," your verdict shall be "not guilty."

Defendant Quartararo requested the Court to give his proposed instructions numbered as hereinafter indicated, which instructions the Court refused to give, and to the refusal by the Court to give said instructions said defendant Vincent Quartararo, through his counsel, then and there duly excepted.

INSTRUCTION X.

The Court instructs the jury that Exhibits 30, 31, 32, 33, 34, 35, 36, 37, which consist of certain dollar bills heretofore allowed in evidence are in no way to be considered in this case, and that the same are to be entirely ignored in arriving at a verdict

in this case. You also are instructed to disregard utterly Government's Exhibits 38, 39, 40, 41, 42, and 43, which contain certain exemplars of handwriting.

Furthermore you are instructed to utterly disregard and refrain from the consideration of the testimony of E. O. Heinrich in so far as it touches said or any of said exhibits.

INSTRUCTION A.

You are instructed that if from the evidence you are convinced beyond a reasonable doubt that any one or more of these defendants knew of the existence of the conspiracy charged in [634] the indictment and yet you entertain a reasonable doubt as to whether such defendant or defendants took part in said conspiracy, you must find such defendant or defendants not guilty.

INSTRUCTION B.

You are instructed that the mere fact that certain of these defendants were or may have been acquainted with each other or may have associated together is not in itself sufficient upon which to find a verdict against them or any of them.

INSTRUCTION C.

You are instructed that you cannot convict any of these defendants merely because the evidence in this case may convince (if it should convince) you that the defendants, or some of them are guilty of a conspiracy, other than the one charged in the indictment.

INSTRUCTION E.

The Court instructs the jury, that you are not in this case trying these defendants for the violation of the "National Prohibition Act," nor are you trying them for an infraction of law of the United States known as the "Tariff Act of 1922." You are sworn to the contrary, to try these defendants solely upon the charge of conspiracy, as alleged in the indictment. And in this connection you are instructed that unless you are convinced beyond any reasonable doubt that the defendants or some of them are guilty of the particular conspiracy to which the indictment refers—you cannot find them guilty even though you may be convinced beyond a reasonable doubt that they are guilty of another or any number of other crimes.

INSTRUCTION F.

You are instructed that even though you believe from the evidence that the conspiracy charged in the indictment existed as therein alleged, and are convinced that some one of the defendants [635] in violation of the National Prohibition Act purchased from some one or more members of such conspiracy and transported the same—certain intoxicating liquor—yet if you entertain a reasonable doubt as to whether such defendant took part in said conspiracy—you must find him not guilty.

INSTRUCTION G.

You are instructed that it is the law by which you are sworn to abide, that if after reviewing all of the facts that have been adduced at this trial

you discover that there are two possible interpretations of these facts, the one of which is entirely consistent with the guilt of the defendant and the other of which is consistent with his innocence, it then becomes your bounden duty to lay that interpretation upon the facts which is consistent with the innocence of the defendant, and accordingly find him not guilty.

INSTRUCTION H.

I instruct you that it is the law that the degree when accused of crime, has a perfect right to stand mute, and that the law draws no adverse imputation from such conduct.

INSTRUCTION I.

I instruct you that it is the law that the degree of proof necessary to establish the guilt of the defendant is more or greater than the degree of proof sufficient to acquit him. In the first instance, the Government must prove to a moral certainty and beyond a reasonable doubt that the defendant is guilty of the offense charged, before you can convict him. In the case of the defendant, however, the degree of proof required on his part is merely such as to raise in your minds a reasonable doubt as to his guilt, and in that case it is your duty to acquit him. [636]

INSTRUCTION J.

The Court instructs the jury that the prosecution in this case have offered the testimony of two persons, namely, Sam Crivello and Marina Crivello, who have pleaded guilty to the crime set forth in

the indictment, you are to review the testimony of these two persons with caution and to weigh their testimony in the light of the fact that they are here testifying as admitted accomplices. You ought not in other words give the same degree of credit to the testimony of such witnesses as you would to the testimony of witnesses who are not accomplices and who have not been impeached. I further charge you in this connection, that if you believe after a careful review of their testimony that the accomplices named have wilfully testified falsely to any material fact in this case you may absolutely discard and disregard their testimony.

INSTRUCTION K.

The Court instructs the jury that certain testimony has been offered here by the Government to the effect that one of these defendants, Vincent Quartararo was present and received from the witness Sam Crivello certain deliveries of illicit liquor at certain times and places. In this connection the said defendant has offered testimony having for its purpose proof that he was not present at the times and places referred to by said witness. In this connection I charge you that if such testimony, or any other evidence which has been here adduced, raises in your mind a reasonable doubt as to whether Vincent Quartararo was present at said times and places it becomes your duty to resolve that doubt favorably to the defendant Vincent Quartararo. [637]

INSTRUCTION L.

You are instructed that it is the duty and sole

province of the jury to say whether or not any fact has been proven or not proven and no witness whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION M.

You are instructed that all questions concerning the identity of handwriting are to be decided exclusively by the jury. You are not bound to follow the opinion of any expert witness if your opinion runs counter to that of such expert witnesses. All questions affecting similarity or dissimilarity of handwriting are to be finally decided by you and by no one else.

INSTRUCTION N.

The Court instructs the jury that it is the positive right and privilege of any one of the defendants here on trial to either take the witness-stand or to refrain from testifying in this case, and as to any defendant who may have not taken the witness-stand, I charge you that the fact that he has not offered himself as a witness is not to be considered by you in any respect in arriving at a verdict in this case. Nor are you to draw any inference adverse to or against any such defendant by reason of the fact that he may not have taken the witness-stand in this case.

INSTRUCTION O.

You are instructed that it is the bounden duty of the prosecution to prove every essential and material fact in this case by more than a preponderance or greater weight of testimony. In a civil

case it is only necessary that a fact on either side be established by a mere preponderance or greater weight of evidence, but in a criminal case it is the law that the prosecution [638] must actually prove every material fact to the entire satisfaction of the jury beyond any reasonable doubt. On the other hand, if you find that the defense in this case has offered evidence of any facts having a tendency to disprove facts advanced by the prosecution, or having a tendency to establish the innocence of the defendant, it is not necessary that the defense prove any facts beyond a reasonable doubt. It is only necessary in any case that the evidence advanced by the defense raise in the mind of the jury or any juror a reasonable doubt and in no case is it necessary that the defendants prove a fact by more than a mere preponderance or greater weight of the testimony.

INSTRUCTION P.

You are further instructed that you cannot convict any of the defendants upon a mere suspicion or upon the mere fact that the probability of their guilt may be greater than the probability of their innocence. The prosecution are bound to establish their guilt beyond all reasonable doubt, and unless they do so you cannot convict them, however strong a suspicion of their guilt you may have in your mind, or however probable their guilt may seem, but it is your duty, under such circumstances to find them not guilty.

INSTRUCTION Q.

You are instructed that the jury in this case are

the sole judges of the facts here offered and you alone are the judges of the credibility of the witnesses who may have testified here. It is your privilege and duty under the law in weighing and considering the credibility of such witnesses to observe and note their conduct upon the witness-stand, the manner in which they have testified and deported themselves, whether or not they are persons who entertain any animus or feeling towards or against the defendants and whether or not their testimony is in [639] any way influenced or colored by any feeling which they may entertain in this case or any interest they may have in the result thereof. If you believe upon hearing the testimony of any of the witnesses that his evidence has been influenced or colored by anything except a desire to testify to the truth, it is your duty to judge of his testimony accordingly and to give it such weight as you deem the testimony of an interested person to be entitled to in this case.

INSTRUCTION R.

The Court instructs the jury that it is the law, by which we are bound in this proceeding, that you and you alone are the judges of the facts in this case, and that your conscientious conclusions upon the facts together with the law wherever you find it applicable to such facts, must alone guide you in arriving at a verdict.

INSTRUCTION S.

You are instructed that it is for you to say whether any fact has been proven or not proven.

And no witness, whether he is an expert witness or not, can decide for you what facts have been here established.

INSTRUCTION T.

You are instructed that the testimony of expert witnesses is to be received by you with great caution.

INSTRUCTION U.

You are instructed that the mere fact that a defendant may have been in a position where he had an opportunity to commit the offense which is here charged against him is not sufficient upon which to find a verdict against him.

INSTRUCTION V.

You are instructed that it is your privilege and duty in weighing the testimony of the witnesses to ascertain for yourselves [640] how much credit should be given to statements made by each and every witness and if you find that any witness has wilfully testified falsely as to any one material matter, you may distrust and discard all of the testimony of that witness.

WHEREFORE, for the Many Manifest Errors committed by said Court, the defendants, through their attorneys, pray that said sentence and judgment of conviction be reversed; and for such other

and further relief as to the Court may seem meet and proper.

KENNETH M. GREEN,
HAROLD C. FAULKNER,

Attorneys for Defendants George Ford, George Harris, J. Evelyn, and Charles Horace Belanger.

NATHAN C. COGHLAN,

Attorney for Defendant, Vincent Quartararo.

Dated at San Francisco, April 10th, 1925.

Receipt of a copy of the within assignment of errors is hereby admitted this 10th day of April, 1925.

STERLING CARR,
United States Attorney.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [641]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS.

Upon motion of the attorneys of defendant, Charles H. Belanger, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause, and that defendant, Charles H. Belanger, be admitted to bail pending the hearing of said writ, in the sum of $20,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants, Charles H. Belanger, Vincent Quartararo, Geo. Ford, J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendant, Charles H. Belanger. [642]

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [643]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS (VINCENT QUARTARARO).

Upon motion of the attorney of Vincent Quartararo, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause,

and that defendant, Vincent Quartararo, be admitted to bail pending the hearing of said writ, in the sum of $20,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further, ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants Charles H. Belanger, Vincent Quartararo, Geo. *Frod,* J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendant, Vincent Quartararo. [644]

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [645]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS (GEO. FORD, J. EVELYN AND GEO. HARRIS).

Upon motion of the attorneys of Geo. Ford, J. Evelyn and Geo. Harris, and upon the filing of petition for a writ of error and the assignment of errors herein, it is hereby,

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals, in and for the Ninth Circuit, the judgment heretofore entered against said defendant, and that the clerk of this court transmit to the clerk of the United States Circuit Court of Appeals, in and for the Ninth Circuit, a full, true and correct transcript of all records and proceedings in the above-entitled cause, and that defendants, Geo. Ford, J. Evelyn and Geo. Harris, be admitted to bail pending the hearing of said writ, in the sum of, Geo. Ford, $20,000.00; Geo. Harris, $15,000.00; & J. Evelyn, $10,000.00.

The bond for costs upon said writ of error is hereby fixed in the sum of $250.00.

It is further, ORDERED, that the assignment of errors filed jointly and severally on behalf of defendants, Charles H. Belanger, Vincent Wuartararo, Geo. Ford, J. Evelyn and Geo. Harris, be and the same is hereby made the assignment of errors on behalf of the defendants, [646] Geo. Ford, J. Evelyn and Geo. Harris.

Dated: April 10, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [647]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (CHARLES H. BELANGER).

KNOW ALL MEN BY THESE PRESENTS: That Charles H. Belanger, as principal and Liberty bonds numbers, —— deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty & no/100 Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 10th day of

April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a district Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and Charles H. Belanger, as defendant, a judgment was rendered against the said Charles H. Belanger and the said Charles H. Belanger having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [648] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said Charles H. Belanger, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

CHARLES H. BELANGER.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [649]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (J. EVELYN).

KNOW ALL MEN BY THESE PRESENTS: That J. Evelyn, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of April in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and J. Evelyn, as defendant, a judgment was rendered against the said J. Evelyn and the said J. Evelyn

having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [650] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said J. Evelyn, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

J. EVELYN.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [651]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (GEORGE FORD).

KNOW ALL MEN BY THESE PRESENTS: That George Ford, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred & Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and George Ford, as defendant, a judgment was rendered

against the said George Ford and the said George Ford having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [652] States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said George Ford, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEO. FORD.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed] Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [653]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (GEORGE HARRIS).

KNOW ALL MEN BY THESE PRESENTS: That George Harris, as principal and Liberty bonds numbers, ——, deposited by C. S. Arnold in the full and just sum of Two Hundred Fifty Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 16th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a District Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and George Harris as defendant, a judgment was rendered against the said George Harris and the said George

Harris having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [654] States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said George Harris, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

GEORGE HARRIS.
C. S. ARNOLD.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [655]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE FORD et al.,

Defendants.

BOND OF COSTS (VINCENT QUARTARARO).

KNOW ALL MEN BY THESE PRESENTS: That Vincent Quartararo, as principal and Liberty bonds numbers, G-02176507-c, Amt. One 50— deposited by George Solomon in the full and just sum of Two Hundred Fifty & No/100 Dollars ($250.00) to be paid to the said United States of America, its certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

WHEREAS, lately at a district Court of the United States for the Northern District of California, in a suit pending in said court, between the United States of America, as plaintiff and Vincent Quartararo as defendant, a judgment was rendered

against the said Vincent Quartararo and the said Vincent Quartararo having obtained from said court a writ of error to reverse the judgment in said court and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United [656] States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH,

That if the said Vincent Quartararo, shall prosecute his writ of error to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

VINCENT QUARTARARO.
GEORGE SOLOMON.

Acknowledged before me the day and year first above written.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [657]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

SUPERSEDEAS BOND OF GEORGE FORD.

KNOW ALL MEN BY THESE PRESENTS: That George Ford of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. D.-00063294-c-1-60 A-00003951-c-1-60—10,000 each—Dep. by C. S. Arnold in lieu of sureties in the par value of $20,000.00 is firmly bound and held unto the United States of America in the penal sum of $20,000.00 lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said George Ford principal and depositor of said above described Liberty bonds in lieu of surety, does hereby bind himself, his heirs executors and administrators, by these presents.

Sealed with his hand and seal this 10th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the

Northern District of California, First Division, in a suit pending in the said court between the United States and George Ford et al., numbered 15,914, in the records of the said court, a judgment [658] and sentence was made, given, rendered and entered against the defendant George Ford in said suit numbered 15,914 as aforesaid, and the said George Ford having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said George Ford shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute said writ of error and if the said George Ford shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said George Ford shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed

for retrial of said cause by said court and to abide the judgment of said Court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [659]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with United States Commissioner for the Northern District of California at San Francisco the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

GEORGE FORD,
Dep. by C. S. Arnold.

Signed, sealed and acknowledged before me this 10th day of April, 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [660]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF J. EVELYN.

KNOW ALL MEN BY THESE PRESENTS: That J. Evelyn of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. C-00021738-C-14-49—$5000 — C-00037498-C-14-49—$5000 — in lieu of sureties in the par value of $10,000.00 is firmly bound and held unto the United States of America in the penal sum of $10,000.00 lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said J. Evelyn principal and depositor of said above described liberty bonds in lieu of surety, does

hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 16th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment [661] and sentence was made, given, rendered and entered against the defendant J. Evelyn, in said suit numbered 15, 914 as aforesaid, and the said J. Evelyn, having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said J. Evelyn shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said J. Evelyn shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said J. Evelyn shall not without permission leave the jurisdiction of the last named Court, and shall

surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [662]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with Thomas E. Hayden, United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

J. EVELYN.

Signed, sealed and acknowledged before me this 16th day of April, 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [663]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF GEORGE HARRIS.

KNOW ALL MEN BY THESE PRESENTS: That George Harris, of the city of Vancouver, Province of British Columbia, Dominion of Canada, as principal, and Liberty Bonds No. A–00020036–C–14–49, $5000.00—B–00020057–C–14–49, $5000.00—D–00021639–C–14–49, $5000.00—in lieu of sureties in the par value of $15,000.00 is firmly bound and held unto the United States of America in the penal sum of $15,000.00 lawful money of the United

States to be paid to the United States of America to which payment well and truly to be made the said George Harris, principal and depositor of said above-described liberty bonds in lieu of surety, does hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 16th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment [664] and sentence was made, given, rendered and entered against the defendant George Harris in said suit numbered 15,914 as aforesaid, and the said George Harris having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said George Harris shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said George Harris shall abide by and

obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said George Harris shall not without permission leave the jurisdiction of the last-named Court, and shall surrender himself in execution of said judgment and sentence as said Court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [665]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with Thomas E. Hayden, United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above-described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the

conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

GEORGE HARRIS.

Signed, sealed and acknowledged before me this 16th day of April, 1925.

[Seal] THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS. J. RIORDAN.

[Endorsed]: Filed Apr. 16, 1925. Walter B. Maling Clerk. By C. W. Calbreath, Deputy Clerk. [666]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD, et al.,

Defendants.

SUPERSEDEAS BOND OF VINCENT QUARTARARO.

KNOW ALL MEN BY THESE PRESENTS: That we Vincent Quartararo as principal, and August A. Bertrand and George Soloman, Helena

Soloman as sureties, are held and firmly bound unto the *the* United States of America, in the sum of Twenty Thousand Dollars, to be paid to the said United States of America, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents. SEALED with our seals and dated the 8th day of May, in the year of our Lord, one thousand nine hundred and twenty-five:

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said Court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said Court, a judgment and sentence was made, given, rendered and entered against the defendant Vincent Quartararo in said suit numbered 15,914 as aforesaid, and the said Vincent Quartararo, having obtained a writ of error to the United States Circuit Court [667] of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals, for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said Vincent Quartararo shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such

day or days as may be appointed for the hearing of said cause in said Court and prosecute said writ of error and if the said Vincent Quartararo shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said Vincent Quartararo shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect.

VINCENT QUARTARARO.
AUGUST A. BERTRAND.
GEORGE SOLOMON.
HELENA SOLOMON. [668]

Signed, sealed and acknowledged before me this 8th day of May, 1925.

[Seal] THOMAS E. HAYDEN,
U. S. Commissioner Northern District of California at S. F.

United States of America,
Northern District of California,—ss.

August A. Bertrand, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says:

That I am a householder in said District and reside at No. 2708 Fulton Street, in the city and county of San Francisco, State of California, and by occupation merchant.

That I am worth the sum of Twenty Thousand 00/100 Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that my property, now standing of record in my name, consists in part as follows:

Real estate, consisting of House and 2 lots at 2708 Fulton St., S. F., Cal. $20,000.00; 1/3 Interest in Bldg. & Impt's at Front & Jackson St., S. F., Cal., $6,000.00; Lot & Imprt's at Boyes Springs—Sonoma Co., Cal., $3,500.00; Total $29,500.00

That the encumbrances on the foregoing property are as follows: Mtge. of $6,000 on Fulton St., property on Front & Jackson is being purchased on an installment contract.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of $50,000.00. [669]

That I am not surety upon outstanding penal bonds, now in force, aggregating total penalty $——.

AUGUST A. BERTRAND. (Seal)

Subscribed and sworn to before me this 5th day of May, A. D. 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner for the Northern District of California.

United States of America,
Northern District of California,—ss.

George Solomon and Helena Solomon, whose names are subscribed to the foregoing undertaking as sureties thereof each being first duly sworn, deposes and says for him and herself:

That they are householders in said district and reside at No. 1304–27th Ave., in the city and county of San Francisco, State of California, and by occupation merchant and housewife.

That they are worth the sum of Twenty Thousand Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution and that our property, now standing of record in our names consists in part as follows:

Real estate, consisting of business and residential property on the S. E. Corner of 27th & Irving St., San Francisco, Cal. Value $40,000.00; Lot on cor. 15th Ave., & Wawona St., S. F. $5,000.

That the encumbrances on the foregoing property are as follows: None.

That my total net assets, above all liabilities and [670] obligations on other bonds, is the sum of $45,000.

That I am not surety upon outstanding penal bonds, now in force, aggregating total Penalty $——.

GEORGE SOLOMON. (Seal)
HELENA SOLOMON.

Subscribed and sworn to before me this 8th day of May, A. D. 1925.

[Seal] THOMAS E. HAYDEN,
United States Commissioner, for the Northern District of California.

[Endorsed]: Filed May 20, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [671]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

SUPERSEDEAS BOND OF C. H. BELLANGER.

KNOW ALL MEN BY THESE PRESENTS: That C. H. Bellanger, of the city and county of Los Angeles, State and Southern District of California as principal, and Liberty Bonds No. —— in lieu of sureties in the par value of $20,000.00 is firmly bound and held unto the United States of

America in the penal sum of $20,000.00, lawful money of the United States to be paid to the United States of America to which payment well and truly to be made the said C. H. Bellanger principal and depositor said above-described liberty bonds in lieu of surety, does hereby bind himself, his heirs, executors and administrators, by these presents.

Sealed with his hand and seal this 10th day of April, 1925.

WHEREAS, at the term of the Southern Division of the United States District Court for the Northern District of California, First Division, in a suit pending in the said court between the United States and Geo. Ford et al., numbered 15,914, in the records of the said court, a judgment [672] and sentence was made, given, rendered and entered against the defendant C. H. Bellanger in said suit numbered 15,914 as aforesaid, and the said C. H. Bellanger having obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence made and entered in said suit and the citation directed to the United States of America, to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, pursuant to the terms and at the time fixed in said citation.

NOW, the condition of the above obligation is such that if the said C. H. Bellanger shall appear either in person or by attorney in the United States Circuit Court for the Ninth Circuit on such day

or days as may be appointed for the hearing of said cause in said court and prosecute said writ of error and if the said C. H. Bellanger shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in the said cause, and the said C. H. Bellanger shall not without permission leave the jurisdiction of the last-named court, and shall surrender himself in execution of said judgment and sentence as said court may direct, if the judgment and sentence shall be affirmed, or the said writ of error dismissed, and if he shall appear for trial in the Northern District of California, on such day or days as may be appointed for retrial of said cause by said court and to abide the judgment of said court in the event said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void, otherwise, to remain in full force, virtue and effect. [673]

AND WHEREAS, under the provisions of Section 1320a of the United States Revenue Act, approved February 24, 1919, the undersigned has deposited with United States Commissioner for the Northern District of California at San Francisco, the official having authority to take and to approve this penal bond, in lieu of surety or sureties, the said Liberty Bonds,

AND WHEREAS, the above-described United States Liberty Bonds are deposited upon the condition and agreement herein given and made that said United States Commissioner shall be and he

is hereby authorized and empowered to collect or to sell the above-described bonds so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Such power to sell or to collect such bonds shall extend to his successor in office.

C. H. BELLANGER.

Signed, sealed and acknowledged before me this 10th day of April, 1925.

[Seal] THOMAS E. HAYDEN,

United States Commissioner for the Northern District of California at San Francisco.

Approved as to form.

THOS J. RIORDAN,
Asst. United States Attorney.

[Endorsed]: Filed Apr. 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [674]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION THAT BILL OF EXCEPTIONS AND ASSIGNMENT OF ERRORS MAY BE CONSIDERED FILED ON BEHALF OF EACH DEFENDANT.

It is hereby stipulated and agreed by and between plaintiff in the above-entitled cause and the defendants, Geo. Ford, Geo. Harris, J. Evelyn, Charles Horace Belanger and Vincent Quartararo, that the proposed bill of exceptions herein, filed and proposed on behalf of defendants last above named, may be and the same is hereby made the proposed bill of exceptions on behalf of said defendants, jointly and individually. It is further,

STIPULATED, that the assignment of errors filed jointly and severally on behalf of said last-named defendants, be and the same is hereby made the assignment of errors on behalf of each of said defendants, jointly and severally.

Dated: April 10, 1925.

STERLING CARR,
United States Attorney.
K. M. GREEN,
H. C. FAULKNER,
N. C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation, so ordered.

JOHN S. PARTRIDGE,
United States District Judge. [675]

[Endorsed]: Filed Apr. 10, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [676]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER THAT ONE ENGROSSED BILL OF EXCEPTIONS MAY BE USED ON EACH SEPARATE WRIT OF ERROR.

It is hereby,

ORDERED, in accordance with the stipulation of counsel for the respective parties hereto entered into, and part of the engrossed bill of exceptions on file herein, that one engrossed bill of exceptions may be used on the separate writs of error, sued out by Charles H. Belanger, Vincent Quartararo, George Ford, George Harris, and J. Evelyn.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [677]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER EXTENDING TIME TO AND INCLUDING APRIL 25, 1925, TO PRESENT PROPOSED AMENDMENTS TO BILL OF EXCEPTIONS.

Good cause appearing therefor, it is hereby ordered that the plaintiff may have to and including the 25th day of April, 1925, within which to present proposed amendments to defendant's bill of exceptions.

Dated: This 20th day of April, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed Apr. 20, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [678]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

ORDER EXTENDING TIME TO AND INCLUDING MAY 9, 1925, TO ENGROSS AND SETTLE PROPOSED BILL OF EXCEPTIONS AND THE AMENDMENTS THERETO.

Good cause appearing therefor,

IT IS HEREBY ORDERED:

That the defendants in the above-entitled action have and they are hereby granted to and including the 9th day of May, 1925, within which to engross the proposed bill of exceptions and the amendments thereto and within which to have the bill of exceptions in the above-entitled action formally signed and settled by the Judge of this court, and within which to file said bill of exceptions.

Dated: April 29, 1925.

JOHN S. PARTRIDGE,
District Judge.

[Endorsed]: Filed Apr. 30, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [679]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION AND ORDER EXTENDING TIME TO AND INCLUDING MAY 14, 1925, TO FILE AND HAVE SETTLED ENGROSSED BILL OF EXCEPTIONS.

It is hereby stipulated by and between the respective parties hereto that the defendants herein may have to and including the 14th day of May within which to engross and file bill of exceptions herein and the amendments thereto and within which to have the engrossed bill of exceptions settled and allowed by the trial Judge.

STERLING CARR,
THOS. J. RIORDAN,
Attorneys for Plaintiff.
KENNETH M. GREEN,
H. C. FAULKNER,
J. B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation so ordered.

PARTRIDGE,

United States District Judge.

[Endorsed]: Filed May 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [680]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEO. FORD et al.,

Defendants.

STIPULATION AND ORDER ENLARGING RETURN DAY OF WRIT OF ERROR AND ON CITATION ON WRIT OF ERROR TO AND INCLUDING JUNE 10th, 1925.

It is hereby stipulated and agreed that the return day on the writ of error and on the citation on the writ of error, may be and the same is hereby extended to and including the 10th day of June, 1925.

Dated: May 8th, 1925.

STERLING CARR,
Attorneys for Plaintiff.
KENNETH M. GREEN,
H. C. FAULKNER,
J. B. O'CONNOR,
NATHAN C. COGHLAN,
Attorneys for Defendants.

Upon the foregoing stipulation so ordered.

PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 8, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [681]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 15,914.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEO. FORD et al.,
Defendants.

ORDER FOR TRANSFER OF ORIGINAL EXHIBITS.

In accordance with the stipulation entered into between counsel for both parties, and incorporated

in the engrossed bill of exceptions herein, it is hereby,

ORDERED, that all the original exhibits introduced in the above-entitled action in their original form, be marked by the clerk and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: May 11th, 1925.

JOHN S. PARTRIDGE,
United States District Judge.

[Endorsed]: Filed May 11, 1925. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [682]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON WRIT OF ERROR.

I, Walter B. Maling, clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 682 pages, numbered from 1 to 682 inclusive, contain a full, true and correct transcript of the records and proceedings, in the case of United States vs. George Ford et al., No. 15,914, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for transcript on writ of error (copy of which is embodied herein).

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Two Hundred Eighty-seven Dollars

and Ninety Cents, and that the same has been paid to me by the attorneys for the plaintiffs in error herein.

Annexed hereto are the original writs of error, returns to writs of error, and citations on writs of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of May, A. D. 1925.

[Seal] WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk. [683]

WRIT OF ERROR (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between George Ford, George Harris and J. Evelyn, plaintiffs in error and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said George Ford, George Harris and J. Evelyn, plaintiffs in error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.
By C. W. CALBREATH,
By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [684]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. George Ford, George Harris, and J. Evelyn, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The Answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D. 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,

Clerk, U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [685]

WRIT OF ERROR (VINCENT QUARTARARO).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between Vincent Quartararo, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened to the great damage of the said Vincent Quartararo, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [686]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of

Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D. 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [687]

WRIT OF ERROR (CHARLES H. BELANGER).

United States of America,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Charles H. Belanger, plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Charles H. Belanger, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under you seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and

according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WM. HOWARD TAFT, Chief Justice of the United States, the 10th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern District of California.

By C. W. Calbreath,
Deputy Clerk.

Allowed by:
JOHN S. PARTRIDGE,
D. J. [688]

Due service and receipt of a copy of the within writ of error is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No, 15,914. United States District Court for the Northern District of California. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain

schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 13th day of April, A. D., 1925, duly lodged in the case in this court for the within-named defendant in error.

By the Court.

[Seal] WALTER B. MALING,

Clerk U. S. District Court, Northern Dist. of California.

By C. W. Calbreath,
Deputy Clerk. [689]

CITATION ON WRIT OF ERROR (GEORGE FORD, GEORGE HARRIS AND J. EVELYN).

United States of America,—ss.

The President of the United States, to United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court

for the Northern District of California, wherein George Ford, George Harris and J. Evelyn, are plaintiff's in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [690]

Due service and receipt of a copy of the within citation is hereby admitted, this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. George Ford, George Harris and J. Evelyn, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error, Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

CITATION ON WRIT OF ERROR (VINCENT QUARTARARO).

United States of America,—ss.

The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein Vincent Quartararo, is, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [691]

Due service and receipt of a copy of the within citation is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

CITATION ON WRIT OF ERROR (CHARLES H. BELANGER).

United States of America,—ss.

The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California, wherein Charles H. Belanger, is, plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the

Northern District of California this 10 day of April, A. D. 1925.

JOHN S. PARTRIDGE,
United States District Judge. [692]

Due service and receipt of a copy of the within citation is hereby admitted this 13th day of April, 1925.

STERLING CARR,
Attorney for Deft. in Error.

[Endorsed]: No. 15,914. United States District Court for the Northern District of California. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Apr. 13, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

[Endorsed]: No. 4602. United States Circuit Court of Appeals for the Ninth Circuit. George Ford, George Harris and J. Evelyn, Plaintiffs in Error, vs. United States of America, Defendant in Error. Vincent Quartararo, Plaintiff in Error, vs. United States of America, Defendant in Error. Charles H. Belanger, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District

Court of the Northern District of California, First Division.

Filed June 2, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Volume I and Volume II. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 4602

United States

Circuit Court of Appeals

For the Ninth Circuit.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error,

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Upon Writs of Error to the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the sixth day of November, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable WALLACE McCAMANT, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

ORDER OF SUBMISSION.

ORDERED above-entitled cause argued by Mr. Kenneth M. Green and Mr. Harold C. Faulkner counsel for plaintiffs in error Ford, Harris, Evelyn and Belanger, and by Mr. Nathan C. Coghlan, counsel for plaintiff in error Quartararo, and by Mr. T. J. Sheridan, Asst. U. S. Attorney, counsel for the defendant in error, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourth day of January, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Honorable William B. Gilbert, William H. Hunt and Wallace McCamant, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the Clerk and that a judgment be filed and recorded in the minutes of this court in the said cause in accordance with the opinion filed therein.

By direction of the Honorable Wallace McCamant, Circuit Judge, ORDERED that his dissent as to plaintiff in error Quartararo, expressed in the opinion of this Court, be entered in the record of this cause.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO and CHARLES H. BELANGER,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Writ of Error to the Northern District of California, Southern Division.

Before GILBERT, HUNT and McCAMANT, Circuit Judges.

Plaintiffs in error and fifty-five others were indicted for conspiracy to violate the National Prohibition Act. A number of the defendants named in the indictment were not apprehended. The defendants Salvadore Crivello and Marino Crivello pleaded guilty. Twenty-nine of the defendants were tried; nineteen of them were acquitted, and ten, including the five plaintiffs in error, were convicted. Ford, Harris and Evelyn were respectively the master, first and second officers of the "Quadra," a British vessel of Canadian registry. On the 12th of October, 1924, this vessel was seized

by the revenue cutter "Shawnee" as a rum runner operating within a prohibited distance of the Farallone Islands. It is the theory of the Government that Quartararo, Belanger and others who have sued out no writs of error were co-operating with the officers of the "Quadra" and other rum-running vessels in landing liquor on the California Coast pursuant to a conspiracy for such purpose.

McCAMANT, Circuit Judge.—Error is assigned on the overruling of a demurrer to the indictment and the denial of a motion to quash the indictment. The charge was a violation of Section 37 of the Criminal Code, which is as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both."

The indictment alleges the enactment of the National Prohibition Act and the Tariff Act of Sept. 21, 1922, also the negotiation of the treaty between Great Britian and the United States of date May 22, 1924. Subdivision b of Section 593 of the Tariff Act and Sections 1, 2 and 3 of Article II of the Treaty are quoted. It is alleged that the Farallone Islands are an American possession situate about 25 miles west of San Francisco. The indictment then charges that the sixty defendants "and divers other persons to this Grand Jury and

these Grand Jurors unknown, did at the bay of San Francisco, within the district and division aforesaid, and within the jurisdiction of this court, on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States that is to say:

(a) To wilfully, unlawfully, feloniously and knowingly sell, transport, import, deliver, furnish and possess within the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of the Act of October 28, 1919, known as the "National Prohibition Act," and the convention, agreement and treaty between the United States and Great Britain of May 22, 1924, and intended for use for beverage purposes in violation of said Act and said Treaty;

(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States, and to assist in importing and

bringing into the United States merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, subdivision (b) of the Tariff Act of 1922, and the convention, agreement and treaty between the United States and Great Britian of May 22, 1924, and intended to be imported and brought into the said United States in violation of said Acts and Treaty."

It is alleged that the conspiracy was continuously in operation from January 1, 1924, to the date of the filing of the indictment which was November 20, 1924. Four overt acts in furtherance of the conspiracy are then set up:

(a) That the "Quadra" was loaded at Vancouver, B. C., in September, 1924, with 12,000 cases of liquor which were carried to a point near the Farallone Islands, where a portion of the cargo was transferred to motor-boats named which carried the liquor into the United States.

(b) That on the 29th of September the "Quadra" delivered a barrel containing one hundred gallons of whiskey to the motor-boat "903 B," which transported the whiskey to San Francisco.

(c) That on the 11th of October the "Quadra" delivered to the same motor-boat a named quantity of alcohol, gin, brandy, whisky, and vermouth, which was transported to San Francisco.

(d) That on the 12th of October the "Quadra" delivered to the defendants Pensotti and McKinzie on the motor-boat "C 55" eighty-nine sacks of whiskey and one case of beer, which the said defendants attempted to transport into San Francisco Bay. It is charged that this delivery was made near the Farallone Islands and at a less distance therefrom than could be traversed by the "Quadra" and the "C 55" in an hour.

Plaintiffs in error contend that the indictment is defective in that it does not specify the respect in which the importation of the liquor was contrary to the provisions of Section 593, subdivision b, of the Tariff Act of 1922. In support of this objection Keck vs. U. S., 172 U. S. 434, is cited. The charge in that case was importing diamonds "contrary to law." This case is distinguished in Miller vs. U. S., 300 F. 529, on the ground that it is presumably lawful to import merchandise and unlawful to sell or possess liquor. It is unlawful to import liquor. Sec. 3 of Title II of the National Prohibition Act, 41 Statutes, 317, Sec. 2 Act of Nov. 23, 1921, 42 Statutes, 222. The charge in this case is not smuggling, but conspiracy. "The offense which it is charged the defendant conspired to commit need not be stated with that particularity that would be required in an indictment charging the offense itself." Anderson vs. U. S., 260 F. 557, 558; Rulovitch vs. U. S., 286 F. 315, 317; Taylor vs. U. S., 2 F. (2d) 444, 446. The defendants were entitled to be apprised of the charge against them with a sufficient recital of detail to enable them

to make their defense and to protect them in a plea of former acquittal or conviction in the event of a second prosecution for the same offense. We think a conspiracy to violate the Tariff Act is sufficiently charged. A conspiracy to violate the National Prohibition Act is unquestionably charged.

It is argued that there can be no criminal offense in violating the treaty between this country and Great Britain. This is true, but the reference to the treaty may be rejected as surplusage and the indictment still states facts sufficient to constitute a crime. Bailey vs. U. S., 5 F. (2d) 437; Remus vs. U. S., 291 F. 501; U. S. vs. Weiss, 293 F. 992, 995; U. S. vs. Drawdy, 288 F. 567, 570. Plaintiffs in error cite Torphy vs. State, 118 N. E. 355, where the Indiana Court reversed a conviction because the indictment improperly charged that defendant had been previously convicted. Such an allegation would be manifestly damaging, but the reference to the treaty in this indictment could not have prejudiced these plaintiffs in error.

It is competent to charge a conspiracy to violate more than one penal statute. U. S. vs. Rabinowich, 238 U. S. 78, 86; Frohwerk vs. U. S., 249 U. S. 204, 210; Remus vs. U. S., 291 F. 501; Powers vs. U. S., 293 F. 964; Taylor vs. U. S., 2 F. (2d) 444, 447; Bailey vs. U. S., 5 F. (2d) 437. A conviction is warranted in such case if the evidence proves a conspiracy to violate one of the statutes named. Kepl vs. U. S., 299 F. 590. The District Court did not err in overruling the demurrer and denying the motion to quash the indictment.

It is the contention of plaintiffs in error that the seizure of the "Quadra" was wrongful for the reason that the vessel at the time she was seized was on the ocean beyond the reach of the laws of the United States and her officers and crew were British subjects. It is earnestly argued that for these reasons the District Court had no jurisdiction of the persons of plaintiffs in error Ford, Harris and Evelyn. It appears that on the seizure of the "Quadra" the vessel, her officers and crew were brought to San Francisco against their will. The defendants were present in court when the case was tried; this was sufficient to vest the District Court with jurisdiction over their persons. The question presented on this record is not whether their arrest was regular, but whether they were guilty and were fairly tried. "The jurisdiction of the Court in which the indictment is found is not impaired by the manner in which the accused is brought before it." Mahon vs. Justice, 127 U. S. 700, 708; Cook vs. Hart, 146 U. S. 183; Adams vs. New York, 192 U. S. 585; Pettibone vs. Nichols, 203 U. S. 192. See also Ker vs. Illinois, 119 U. S. 436, 444.

In Latham vs. U. S., 2 F. (2d) 208, 210, the Circuit Court of Appeals for the Fourth Circuit says: "The defendants being under arrest in the United States, it makes no difference that they were outside the jurisdiction when by aiding and abetting they become principals in crime committed in the United States. They could not have been extradited as fugitives from justice because they had not fled from the United States, but being under arrest

in the jurisdiction they could be tried and convicted as participants in the crime."

The question of venue is less readily answered. It was incumbent on the Government to prove that these plaintiffs in error were parties to a crime committed in the Northern District of California.

The indictment charges a conspiracy entered into at San Francisco Bay within the said district and continuing from January 1, to Nov. 20, 1924. The purpose of the conspiracy was to violate the Prohibition and Tariff Acts by importing, selling and possessing intoxicating liquor in said district.

Evidence was received that in April or May, 1924, the plaintiff in error Quartararo employed the defendant, Sam (Salvadore) Crivello, to carry liquor in the motor-boats "Skidaddle" and "California" from a point outside the Farallones to Oakland Creek and Pacific City, which are points within the Northern District of California, Southern Division. This was a continuing employment. Under it Crivello received liquor from the "Norbund," the "Malahat" and the "Quadra." Quartararo introduced Crivello to plaintiff in error Belanger and the latter actively co-operated in the enterprise. At the instance of Belanger, Crivello transported sacks from the city to the "Malahat," from which vessel they were removed to the "Quadra." These sacks were suitable containers for bottled liquor and were so used. There was evidence that Belanger had some control over the "Malahat" and the "Quadra." He gave written

orders to transfer liquor from one vessel to the other and orders also to bring cargo ashore.

Marino Crivello, brother of Sam, was subsequently employed by Belanger to transport liquor from the "Quadra" to Drake's Bay in Marino's boat, the "Marconi."

The evidence shows a number of deliveries of liquor from the "Norburn," the "Malahat" and the "Quadra," and there is no evidence that money passed at the time when the deliveries were made. The deliveries of liquor were in fulfilment of orders designated by number. This is not the simple case of the sale and delivery of liquor on the high seas by a foreign vessel. The deliveries were made pursuant to prearrangement. There is no evidence that anyone from these vessels came ashore and no evidence that either Quartararo or Belanger visited the vessels. The "Kiltuish" came out to the "Quadra" from time to time to supply her with oil. This service was manifestly rendered pursuant to an arrangement previously made therefor.

It appears that the "Malahat" left Vancouver, B. C., May 23, 1924, with a cargo of liquor destined to Buenaventura, Columbia; the "Coal Harbor" left the same port with a similar cargo July 5, 1924, destined to La Libertad, San Salvador, and the "Quadra" left Vancouver Sept. 9, 1924, destined to La Libertad and carrying a large cargo of miscellaneous liquors. The shipper of all these cargoes was Consolidated Exporters Corporation Limited, a Canadian corporation. It was incorporated Aug. 24, 1922. Among the stated "objects

for which the Company is established" are these: a. To take over as a going concern assets of David Liquor Company Limited. . . . Nat Bell Liquor Company, Limited. . . . B. C. Liquor Company, Limited, and Dominion Liquor Company, Limited. b. To import, export and deal in wines and alcoholic . . . beverages of all kinds . . . in so far as the Law allows the same to be done.

The annual report of this corporation made as of date October 31, 1923, shows that plaintiff in error Belanger was one of its directors. Accompanying the report is a certificate that on the 2d of June, 1924, one M. Ripstein had ceased to hold office as director. There is no corresponding showing as to Belanger and the inference is warranted that he was a director in this corporation during the summer and early autumn of 1924.

Instead of proceeding to the destination named in their papers, the "Malahat," the "Coal Harbor" and the "Quadra" all proceeded to a point on the high seas off the Golden Gate. They there exchanged liquor with each other and the "Malahat" and the "Quadra" delivered liquor to small vessels for transportation to the shore.

On the entire case the conclusion is warranted that about the 1st of May, 1924, Quartararo and Sam Crivello, within the Northern District of California, conspired to import and possess liquor; that Belanger and his corporation either had an understanding with Quartararo at that time or shortly thereafter became parties to the conspiracy;

and that the departure of the "Quadra" with her cargo from Vancouver on the 9th of September was pursuant to the same conspiracy.

Three of the four overt acts alleged in the indictment are clearly proved and at least one of them took place in the Northern District of California.

It is well settled that a prosecution under Section 37 of the Criminal Code may be maintained either at the place where the conspiracy was formed or where one or more of the overt acts took place. Hyde vs. U. S., 225 U. S. 347, 362–363; Brown vs. Elliott, 225 U. S. 392, 400; Jianole vs. U. S., 299 F. 496, 498; Latham vs. U. S., 2 F. (2d) 208; Horwitz vs. U. S., 5 F. (2d) 129. One physically without the jurisdiction may be a party to a crime committed therein. Burton vs. U. S., 202 U. S. 344, 387, 389; Strassheim vs. Daily, 221 U. S. 280, 284–285. This principle is applicable to prosecutions for conspiracy. Dealy vs. U. S., 152 U. S. 539, 546.

It is argued that the above authorities, or some of them, are based upon Section 731 of the Revised Statutes, which is as follows:

> "When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein."

It is contended that there is a distinction between a conspiracy formed in one state which is carried out in another state and a conspiracy formed or effected in a foreign country. In this case we are concerned with a conspiracy formed in the Northern District of California, which was effected in part by acts which took place in Canada and on the high seas. Dealy vs. U. S., 152 U. S. 539, 547, is in point. It was contended in that case that the overt acts relied on were all committed in Canada. The Court said: "If the conspiracy was entered into within the limits of the United States and the jurisdiction of the Court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere." In Horwitz vs. U. S., 5 F. (2d) 129, the District Court for Massachusetts was held to have jurisdiction to try a conspiracy charge when the acts effectuating the conspiracy took place for the most part in a foreign country and on the high seas.

The District Court had jurisdiction to try this case and there was no error in denying the motions for a directed verdict.

Liquor on the "Quadra" was seized. A petition was filed to suppress this evidence and when the petition was denied an objection and exception were reserved to receiving the liquor in evidence. The contention of plaintiffs in error is that at the time of the seizure the "Quadra" was 13½ miles distant from the nearest point on the Farallone Islands. The treaty between Great Britain and

this country ratified May 22, 1924, contains the following provisions:

"ARTICLE II.

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

"(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

"(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States

its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised."

This treaty is an agreement between the two nations defining the limits within which British vessels may be searched and seized. There is an implied agreement that this country will not search or seize them without the limits fixed. The Frances Louise, 1 F. (2d) 1004; The Marjorie E. Bachman, 4 F. (2d) 405; The Sagatind, 4 F. (2d) 928; La Ninfa, 75 F. 515.

On the 17th of February, 1925, the witness August Anderson made a test of the speed of the "C 55"; he testified that her average speed was 6.6 knots per hour. The Government's evidence was that the "Quadra" was seized at a point 5.7 knots from the nearest point in the Farallones. There was evidence that the "C. 55" had received liquor from the "Quadra" and the inference was plain that it was the intention to transport this liquor to San Francisco. The Government therefor contends that the seizure was warranted by the position in which the "Quadra" was found. The officers of the "Quadra" testified that at the time of the seizure the vessel was 13½ miles from the nearest point of the Farallones.

Plaintiffs in error contend that the question was one for the jury and they reserved exceptions to the refusal of the Court to charge the jury on the sub-

ject. The question arose on the admissibility of evidence and it is the function of the Court to determine what evidence is admissible. It follows that the Court must determine for itself the facts necessary to be determined in passing on objections to testimony offered. The Supreme Court has recently so held. Steele vs. U. S., 267 U. S. 505, 511.

The evidence shows that the "C 55" had no load when her speed was tested on the 17th of February and an objection was reserved to any evidence of her speed unless the evidence was confined to conditions substantially identical with those obtaining at the time of the seizure. This contention is supported by the Over the Top, 5 F. (2d) 838, a decision rendered by the District Court for Connecticut. We think this construction of the treaty is unwarranted by the language used: "The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States its territories or possessions than can be traversed in one hour by the vessel." We do not find any qualifying words after "vessel" such as "when loaded" or "under conditions of wind and tide prevailing at the time of seizure." We should not read into the treaty limitations which have not been written therein. The Courts of this country should be careful not to fritter away by construction concessions secured by the State Department for the purpose of combatting the rum running abuse. The treaty, fairly construed, embodies the consent of Great Britain that her ships may be searched and seized under proper condi-

tions within such a distance from our shores as can be traversed in an hour by any of the boats on which they discharge their liquor. The evidence shows that the "C 55" can traverse 6.6 knots within that time. The "Quadra" was therefore subject to search and seizure if she was within 6.6 miles of the Farallones.

The testimony on this subject is in hopeless conflict. Captain Howell and Ensign Morse of the "Shawnee" testify that at the time of the seizure they took the bearings *of* Point Reyes and the North Farallones. With the aid of these bearings the position of the "Quadra" was platted on the chart and found to be 5.7 nautical miles from the North Farallones. This result was checked by taking a sounding. The depth of water was found to be 44 fathoms. This was the depth of water as shown on the official chart at the point indicated by the calculations.

On the other hand, plaintiffs in error Harris and Evelyn, first and second officers of the "Quadra," testify that they took bearings *of* Point Reyes and the South Farallones lighthouse. Their calculations based on these observations were checked by R. Lovez, an expert residing in San Francisco, who testified that if these bearings were correctly taken, the "Quadra" was distant 13.6 miles from the nearest point in the Farallones at the time of the seizure.

Testimony was also offered to show that the sounding relied on by the Government was not taken at the place of the seizure, but was taken

while the "Quadra" was being towed into San Francisco Bay and after the tow had been in progress for an hour and a half. The Government countered this evidence by testimony that Jacob Schybinger, the witness who so testified for the defendants, was in the engine-room of the "Shawnee" at the time when he said the sounding was taken and that he could not have seen what was happening on deck.

The burden of proof was on plaintiffs in error. In a prosecution for conspiracy to violate the Prohibition Act liquor kept for sale and in the possession of the defendants is ordinarily admissible in evidence. Plaintiffs in error in seeking the suppression of this evidence must show some good reason for suppressing it. The District Court heard and saw the witnesses. We cannot say on this record that he erred in holding that plaintiffs in error had not sustained the burden which the law laid upon them on this issue.

In passing on this question the District Court used the following language:

"Of course, it must be apparent to anybody that there has been perjury in this case. Whatever my personal views may be in regard to it, the testimony that has been given here by the officers of the 'Shawnee' and the testimony that has been given here by the two others that were produced, cannot both be true in regard to that sounding. . . . The Court will find that the ship was seized within the limits provided by the treaty with Great Britain." An exception was reserved to the language used.

Plaintiffs in error are mistaken in assuming that the reference to perjury was applicable to the testimony of Harris and Evelyn. It manifestly referred to the testimony of Schybinger and Gisbourne, a member of the crew of the "Quadra," who corroborated him. Gisbourne was a defendant, but he was acquitted.

The testimony with reference to the sounding was utterly irreconcilable and the conflict was not due to any mistake in recollection. The Court, moreover, was passing on an issue which was for determination by him and not by the jury. The federal practice justifies the trial Court in commenting on the testimony. The language excepted to was perhaps ill chosen, but it did not involve such prejudice to Harris and Eyelyn as to call for the reversal of the judgment as to them.

Assuming that the position of the "Quadra" was as testified by Captain Howell and Ensign Morse, the seizure was warranted by the provisions of the treaty above quoted and Section 586 of the Tariff Act of Sept. 21, 1922, which is in part as follows:

"The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within four leagues of the coast of the United States and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less

than $1,000, and such vessel and the merchandise shall be subject to seizure and forfeiture." The day preceding the seizure the "Quadra" had discharged a part of her cargo of liquor in the "903 B" and this vessel was seized in San Francisco Bay while attempting to land the liquor. At the time the "Shawnee" overtook the "Quadra" the "C 55" was hove to at her side with a supply of liquor received from the "Quadra." There was a present attempt to transfer liquor from the "Quadra" to the California Coast. This justified the seizure. The Pictonian, 3 F. (2d) 145. Captain Ford of the "Quadra" refused to show his papers as required by Section 1 of Article II of the Treaty and by Section 2 of the same Article Captain Howell was warranted in taking the "Quadra" into a United States port for adjudication of her status in accordance with our laws. The facts certainly made out a case of "reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States . . . prohibiting the importation of alcoholic beverages." The liquor found on the "Quadra" was properly received in evidence. Canada vs. U. S., 5 F. (2d) 488.

It is contended that there was error in receiving the testimony of Sam Crivello about the liquor secured by him from the "Norburn" about the 1st of May, 1924, and delivered to Quartararo at Oakland Creek. It is argued that this incident bore no relation to the conspiracy involved in the pres-

ent prosecution. Plaintiffs in error cite Terry vs. U. S., 7 F. (2d) 28, and Crowley vs. U. S., 7 F. (2d) —. These cases hold that in a prosecution for conspiracy the Government's evidence must be confined to proof of the conspiracy charged and the Terry case holds that "the scope of the conspiracy must be gathered from the testimony." Within these rules we think the testimony as to the "Norburn" incident was admissible. The Government explicitly proved that prior to Crivello's reception of liquor from the "Norburn" he had been employed by Quartararo to receive and transport liquor from various vessels and to deliver it to Quartararo at Oakland Creek. Here was clear proof of a conspiracy between these two defendants within the allegations of the indictment. The jury was warranted in finding from the evidence that either Belanger and his corporation were originally parties to the conspiracy, or that they and the officers and crew of the "Quadra" adhered to it subsequently. The indictment charges that the defendants conspired with other parties to the grand jury unknown. Under this allegation it was competent to receive evidence of acts in furtherance of the conspiracy by Belanger's corporation, Consolidated Exporters Company, Limited, and the officers and crew of the "Malahat" and the "Coal Harbor." Thomas vs. U. S., 156 F. 897, 907.

A majority of the Court are of the opinion that there is evidence to sustain the verdict as to the defendant Quartararo and that there was no error

of which he had a right to complain. It is the view of the writer that there was error as to Quartararo in the following matter.

Counsel for the Government in his opening statement to the jury said: "We will show you . . . that the individuals in San Francisco who were a part of this conspiracy . . . used a system of $1 bills to secure their cargo; that these bills were clipped in half, one-half being delivered to the captain or supercargo of the 'Quadra,' and the other half going out in the small motor-boat that went to secure the particular load of cargo called for, these $1 bills having upon their back the list and order for the specific amount, and the kind of liquor that was to be secured from the 'Quadra,' that when they got out there the bills were matched up, and when they were matched up the cargo was delivered to the particular motor-boat, and then they brought their cargo right in to San Francisco." The Government proved that about Nov. 10, 1924, someone left eighty-three dollar bills at the Bank of Italy. These bills had been clipped in two and subsequently pasted together. The party having the mutilated bills had requested that they be exchanged for fresh money. It did not appear that Quartararo left them at the bank, but there was proof that endorsements on these bills were in the handwriting of Quartararo. With no other evidence connecting them up with the conspiracy these bills were received in evidence. There was an entire failure of proof as to the system by which business was transacted on the

"Quadra" outlined in the opening statement. The bills contained endorsements of lists of liquor. The quantities of liquor listed on the bills were large, indicating that the party making the lists was trafficking in liquors. For example, one of the bills in Exhibit 31 contained on the front of the bill the following:

"10 Plymouth Gin
5 Royal George
5 Highland Queen
2 Drums Alcohol.
Not to be filled,
only for record on order No. 15."

The endorsement on the back of this bill was:

"30 Burnett's Gin
45 Plymouth Gin

75

The bills were left with the bank about four weeks after the seizure and at a time when the conspiracy was at an end so far as the testimony shows. The effect of this testimony was not to connect Quartararo with the conspiracy charged, but to create an inference that he was dealing in intoxicating liquors generally. The writer believes that it was error to receive these bills in evidence, but error prejudicial to Quartararo only. The error was emphasized by a reference to the dollar bills in the charge of the Court. In the opinion of the writer the instruction requested by Quartararo withdrawing these bills from consideration by the jury should have been

given. Terry vs. U. S., 7 F. (2d) 28. A majority of the Court think otherwise.

Error is assigned on the reception in evidence of logs kept by J. H. Mason, Chief Engineer of the "Quadra" and J. A. McLennan, one of the crew. Both Mason and McLennan were parties defendant. The entries in these logs were made from day to day while the vessel was proceeding from Vancouver south and while she was lying off the Farallones. A *prima facie* showing of conspiracy was certainly made by the Government. In such case the declarations of one conspirator with reference to acts in furtherance of the conspiracy are admissible against all. The declarations contained in these logs come within this rule. Thomas vs. U. S., 156 F. 897, 909–910.

Error is assigned on the refusal of the Court to permit Harris and Evelyn to testify that they did not believe their acts to be unlawful. At the request of these plaintiffs in error the Court charged: "The first and second mate are bound to obey the lawful orders of the master of the ship; the members of the crew are bound to obey the lawful orders of the captain of the ship, and they are bound likewise to obey the lawful orders of the first officer, or failing him on watch, the second officer. They are bound, Gentlemen, even to obey an unlawful order of the master and officers of the vessel unless they know that it is unlawful. Mere suspicion that the captain or the mates are telling them to do something that is contrary to the law is not sufficient; they are bound to obedience unless they know that

what they are doing is unlawful and therefore wrong." There is an inconsistency between the ruling on evidence and the charge given. We think the charge was more favorable to these plaintiffs in error than they were entitled to and that the testimony above referred to was properly excluded. The officers of a vessel carrying liquor and hovering off our coasts are chargeable with a knowledge of our laws. A party cannot escape criminal responsibility for his acts by entering into a contractual relation under which he obligates himself to obey the orders of a wrongdoer. These plaintiffs in error testified that they participated in the sacking of cased liquor and the delivery of it to motor-boats under orders from Captain Ford.

An exception was reserved to the refusal of the Court to permit Captain Howell of the "Shawnee" to be cross-examined with reference to the grounds on which he had been court-martialed. There was nothing in his direct examination bearing on this subject and the Court properly excluded the testimony other than his admission of the fact that he had been court-martialed.

After both sides had rested, the Court permitted the case to be reopened in order that the Government might introduce the following telegram purporting to be sent by the defendant Belanger:

"San Francisco, June 24/24.

"Geo. Norgan,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.

"Merchandise not yet reached market. There-

fore cannot report anything different. Stop. Have appointment with Vince tomorrow who will make proposition in morning. Things shaping good. Regards.

C. H."

The Government contended that "merchandise" meant liquor and that "Vince" was the defendant Vincent Quartararo. Plaintiffs in error claim that there was an insufficient showing of the authenticity of the telegram.

There is no presumption that a telegram is sent by the party who purports to send it. Before it can be received in evidence there must be some proof connecting it with its alleged author. Drexel vs. True, 74 F. 12; Smith vs. Easton, 54 Md. 138, 145; Cobb vs. Glenn Boom Co., 57 W. Va. 49, 49 S. E. 1005, 1008; Burt vs. Winona Co., 31 Minn. 472, 18 N. W. 289. The necessary proof may consist of circumstantial evidence. Oregon Steamship Co. vs. Otis, 100 N. Y. 446, 3 N. E. 485. The original telegram in this case is typewritten. It appeared that it was received at the office of the Postal Telegraph Company at St. Francis Hotel, San Francisco, and that it was sent over the wires. The agent of the telegraph company took the name and address of the sender as "C. H. Belanger, Somerton Hotel." It appeared that Belanger was registered at the Somerton Hotel on the day when the wire was sent. This was as far as the Government went in authenticating the wire, but the defendant Belanger offered further proof. This proof did not deny the authenticity of the wire, but undertook to explain it as

relating to something other than the conspiracy charged. It appeared that Belanger had been in Los Angeles on Sunday, June 22, 1924, and in conference there with Norgan, to whom the telegram was addressed. Belanger left Los Angeles on the 22d or 23d of June for San Francisco. He called up the witness H. L. Williams at Los Angeles and told him he was going to communicate with Norgan. In reviewing the ruling of the Court receiving the telegram in evidence it is our duty to consider this evidence subsequently received. De Witt vs. U. S., 291 F. 995, 1002. We think that the circumstances were sufficient to constitute a *prima facie* authentication of the wire and that it was properly received.

Other telegrams, admittedly sent by Belanger, were also received. Their connection with the conspiracy is not shown, but their contents were not damaging and we think that this plaintiff in error was not prejudiced by their admission.

Plaintiffs in error excepted generally to the following portion of the charge:

"The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various vessels plying out of the harbor of Vancouver was to lie off the coast of the United States

and to land the liquor illegally and unlawfully upon our shores.

"It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the Coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

"It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the Court, were the means or agency by which the scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

"Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment."

The exception did not direct the Court's attention to the question of venue, nor did plaintiffs in error request any instruction on that subject. It is now contended that the Court directed the jury to convict if it found the defendants parties to a con-

spiracy formed in Canada whereas the charge in the indictment is a conspiracy formed at San Francisco Bay. We do not so read the instruction complained of. There is a reference to a corporation formed in Canada, but no reference to a conspiracy whose situs was in Canada. If the jury found the facts to be as outlined in the instruction it was their duty to convict those who participated in the scheme. The Court was not discussing the question of venue. When an instruction covers a single proposition of law a general exception to such instruction is sufficient; but when an exception is reserved to a considerable portion of the charge, the exception should be sufficiently specific to direct the attention of the trial court to the legal questions which it is desired to reserve. C. W. Young Co. vs. Union Oil Co., 293 F. 742. It is also to be said that it was clear for reasons already pointed out that if the defendants were guilty the District Court in which they were tried had jurisdiction of their offense. We find no error in the charge quoted.

It would unduly prolong this opinion to discuss other exceptions and assignments of error. They have all been considered and we find no error except that, in the opinion of the writer, the dollar bills should not have been admitted in evidence and the requested instruction removing them from the consideration of the jury should have been given.

The judgment is affirmed as to all plaintiffs in error, the writer dissenting as to Quartararo.

[Endorsed]: Opinion. Filed Jan. 4, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS, and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

In Error to the District Court of the Southern Division of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

[Endorsed]: Judgment. Filed and entered January 4, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D., 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighth day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS, and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER DENYING PETITIONS FOR A REHEARING.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William H. Hunt and Wallace McCamant, Circuit Judges, before whom the cause was heard, IT IS ORDERED that the petition, filed February 3, 1926, on behalf of plaintiffs in error Ford, Harris, Evelyn and Belanger, for a rehearing of the above-entitled cause be, and hereby is denied.

IT IS FURTHER ORDERED, by direction of the Honorable William B. Gilbert and William H. Hunt, Circuit Judges (Honorable Wallace McCamant, Circuit Judge, dissenting), that the petition, filed February 3, 1926, on behalf of plaintiff in error Quartararo for a rehearing of the above-entitled cause be, and hereby is denied.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the tenth day of February, in the year of our Lord one thousand nine hundred and twenty-six. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

CHARLES H. BELANGER,
Plaintiff in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

ORDER STAYING ISSUANCE OF MANDATE, ETC.

Upon motion of Mr. Kenneth M. Green, counsel for the plaintiffs in error Ford, Harris, Evelyn and Belanger, and upon motion of Mr. Louis V. Crowley, counsel for plaintiff in error Quartararo, and good cause therefor appearing, ORDERED mandate of this court in the above-entitled cause stayed until after the Supreme Court of the United States passes upon the petition to be made on behalf of the plaintiffs in error for the issuance of a writ of certiorari herein, on condition that the said petition be docketed in the said Supreme Court on or before March 15, 1926.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4602.

GEORGE FORD, GEORGE HARRIS and J. EVELYN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

VINCENT QUARTARARO,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CHARLES H. BELANGER,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,

do hereby certify the foregoing eight hundred and seventy-two (872) pages, numbered from and including 1 to and including 872, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled cause in the said Circuit Court of Appeals, made pursuant to request of counsel for the plaintiffs in error and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of February, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 19, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U.
FILED
MAR 15 1926
WM. R. STANSBURY
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1925.

No. [redacted]312 - 273/21

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO AND CHARLES H. BELANGER, *Petitioners*,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

J. HARRY COVINGTON,
MARION DEVRIES,
GEORGE ROSCOE DAVIS,
Washington, D. C.

KENNETH M. GREEN,
HAROLD C. FAULKNER,
LOUIS V. CROWLEY,
NATHAN C. COGHLAN,
JAMES B. O'CONNOR,
Humboldt Bank Building,
San Francisco, California.

Attorneys for Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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In the
Supreme Court of the United States

OCTOBER TERM, 1925.

No. ———.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO AND CHARLES H. BELANGER, *Petitioners*,

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, George Ford, George Harris, J. Evelyn, Vincent Quartararo and Charles H. Belanger, respectfully represent:

The Decisions Below.

1. January 4, 1926, the United States Circuit Court of Appeals for the Ninth Circuit affirmed a judgment of the

Southern Division of the District Court for the United States for the Northern District of California convicting these petitioners of a conspiracy to violate the Tariff Act of 1922 and the National Prohibition Act (R. 868).

2. Circuit Judge McCamant dissented as to the conviction of the petitioner Quartararo. (R. 867).

3. A rehearing was denied February 3, 1926 (R. 870).

4. The opinion of the Circuit Court of Appeals for the Ninth Circuit will be found in the record at page 840. This opinion has not been reported, but an opinion of the District Judge on a motion to exclude and suppress certain evidence is reported as United States v. Ford, 3 F. (2d) 643.

Summary of the Matter Involved.

1. These petitioners, with others, were indicted for conspiracy to violate the National Prohibition Act and the Tariff Act of 1922. It was set forth in the indictment that the offenses which they had committed were contrary to the treaty between the United States and Great Britain of May 22, 1924 (R. 12).

2. The material part of this treaty is as follows:

ARTICLE I.

"The high contracting parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards and measured from low water mark constitute the proper limits of territorial waters.

ARTICLE II.

"(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories

or possessions in order that inquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such inquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

"(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, *the vessel* may be seized and taken into a port of the United States, its territories or possessions *for adjudication in accordance with such laws.*

"(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in *one hour* by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than the one boarded and searched, it shall be *the speed of such other vessel* and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised." (Italics ours.) 43 Stat. L. 1761.

3. It was alleged in the indictment that the conspiracy was in operation from January 1, 1924, to the date of the filing of the indictment on November 20, 1924, and four overt acts in furtherance of the conspiracy were set up as follows:

(a) That the "Quadra" was loaded at Vancouver, B. C., in September, 1924, with 12,000 cases of liquor which were carried to a point near the Farallone Islands, where a portion of the cargo was transferred to motor boats named which carried the liquor into the United States.

(b) That on the 29th of September the "Quadra" delivered a barrel containing one hundred gallons of whiskey to the motor boat "903 B" which transported the whiskey to San Francisco.

(c) That on the 11th of October the "Quadra" delivered to the same motor boat a named quantity of alcohol, gin, brandy, whiskey, and vermouth which was transported to San Francisco.

(d) That on the 12th day of October the "Quadra" delivered to the defendants Pensotti and McKinzie on the motor-boat "C-55" eighty-nine sacks of whiskey and one case of beer which the said defendants attempted to transport into San Francisco Bay. It is charged that this delivery was made near the Farallone Islands and at a less distance therefrom than could be traversed by the "Quadra" and the "C-55" in an hour. (R.13).

4. The steamer "Quadra," a British vessel of Canadian registry, had been seized on October 12, 1924, with her papers and cargo by a United States Revenue Cutter under the claim that it was operating within the prohibited distance from the Farallone Islands. The petitioners, Ford, Harris and Evelyn were British subjects and were the Master, First and Second officers of the "Quadra," respectively, and were seized with the ship. They protested against their seizure and the seizure of the ship and its contents (R. 34).

5. A motion was promptly made by the petitioners to exclude and suppress evidence taken from the "Quadra" consisting of liquor and papers. This was denied, United States v. Ford, 3 F (2d) 643. (R. 32, 38).

6. The petitioners were thereafter convicted and the conviction was affirmed by the Circuit Court of Appeals for the Ninth Circuit, Circuit Judge McCamant dissenting as to the conviction of the petitioner Quartararo. (R. 867).

7. The theory under which the seizure of the "Quadra" was justified was that liquor was intended to be conveyed to the United States from the "Quadra" in the "C-55,"

that the speed of the "C-55" was 6.6 knots per hour, and that the distance of the "Quadra" from the Farallone Islands was only 5.7 knots. The position of the "Quadra" and the speed of the "C-55" were not left to the jury but were determined by the Court as preliminary questions. No proof was offered of the speed of the "C-55" under the conditions at the time of the seizure. The proof offered was based on tests of the "C-55" unloaded and in the quiet waters of San Francisco Bay four months after the seizure. The Circuit Court of Appeals carefully considered this point and interpreted the treaty as not requiring the vessel to traverse the distance in an hour under the conditions prevailing at the time of seizure (R. 854).

8. During the course of the trial important questions arose as to venue and as to the admission of evidence. These as well as the questions relating to the treaty will be briefly stated in the following "reasons relied on for the allowance of the writ."

Reasons Relied On for the Allowance of the Writ.

1. The case presents highly important questions arising under the treaty with Great Britain of May 22, 1924, which should be settled by this Honorable Court. The error of the Circuit Court of Appeals for the Ninth Circuit in regard to these questions may be briefly stated as follows:

A. The indictment did *not* charge a violation of the prohibition laws but charged a *conspiracy* to violate the National Prohibition Act and the Tariff Act of 1922. There was no justification for the admission in evidence at the trial of liquor and papers seized on a British boat outside of the three mile limit since the treaty in question permitted only the seizure of a vessel *for adjudication in accordance with the laws of the United States prohibiting the importation of liquor beverages.*

B. In interpreting Article 2, Section 3, of the treaty

with Great Britain, whereby the right of search and seizure is limited to a distance that can be traversed in one hour by the vessel suspected or by such other vessel as is intended to convey the liquor in question to the United States, such speed should be determined only under substantially similar conditions, and it was error and in violation of such treaty to determine the jurisdictional distance by testing the speed of the vessel unloaded on the quiet waters of San Francisco Bay instead of loaded and in the open waters of the Pacific, especially as such test was made at a date four months after the seizure. The Circuit Court of Appeals interpreted the treaty as not requiring that the tests to determine the speed of the boat need not be made under similar conditions as those obtaining at the time of seizure. On this interpretation of the treaty the District Court for Connecticut has given a decision directly contrary to that in the pending case, in *Over the Top*, 5 F. (2d.) 838, and *this diversity between circuits is expressly recognized in the opinion in the pending case* (R. 854).

C. The treaty with Great Britain permits seizures only "for adjudication" of "the vessel" and does not permit a criminal prosecution of British citizens seized beyond the territorial waters of the United States. The indictment being based upon this treaty, a demurrer which was filed thereto should have been sustained.

D. Assuming that the treaty permits criminal prosecution of British subjects on the seized boat, the place of seizure must be within the terms of the treaty, and on an indictment setting up the treaty it was error for the court to determine the distance of the seized boat from the United States as a preliminary question of fact, and not leave the same to the jury.

2. Irrespective of the treaty, the case involves an important question of criminal law which should be decided by this Court. The acts of the petitioners Ford, Harris and Evelyn were committed in Canada and on the high seas outside the territorial limits of the United States. It is submitted that Section 37 of the Criminal Code under

which they were indicted has no extra-territorial effect and that no crime was committed thereunder.

3. The Circuit Court of Appeals in holding that there was venue, has also decided a highly important question of Federal law which has not been, but should be, settled by this Court: When considered in connection with the Sixth Amendment of the Constitution of the United States, Section 731 of the revised statutes, which permits the prosecution in *either* District of an offense begun in one *jurisductional district* and completed in another, does not permit the prosecution in a District Court of the United States under Section 37 of the revised statutes for an alleged conspiracy begun *outside any District* of the United States. If the acts of these petitioners can be termed a conspiracy it was begun in Canada, and there was therefore no venue under the statute.

4. The Circuit Court of Appeals also affirmed the decision of the trial court upon important questions of general law in a way probably untenable and in conflict with the weight of authority. The trial judge apparently decided these questions under a theory of law which he had held in the case of Terry v. United States, in which, however, his view was subsequently reversed by the Circuit Court of Appeals for the Ninth Circuit, *Terry v. United States,* 9 Fed. (2d) 28. These may be summarized briefly as follows:

A. There was error in admitting evidence of another conspiracy between some of the same parties relating to the landing of liquor from the ship "Norburn," a conspiracy entirely distinct from that charged in the indictment relating to the "Quadra."

B. There was error in allowing in evidence certain dollar bills with markings thereon tending to show large purchases of liquor by defendant Quartararo, in the absence of any evidence connecting such dollar bills with the case on trial. On this point Circuit Judge McCamant dissented.

C. There was error in admitting a telegram purporting

to be sent by the petitioner Belanger apparently relating to purchases, in that this telegram was not shown to relate to the conspiracy charged.

Wherefore, the petitioners believing that the aforesaid judgment of the United States Circuit Court of Appeals for the Ninth Circuit is erroneous, respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court directed to the said United States Circuit Court of Appeals for the Ninth Circuit, as provided by law, to the end that the said case may be reviewed and determined, and that upon final consideration thereof, the judgment of the said United States Circuit Court of Appeals for the Ninth Circuit may be reversed with such directions as to this Court may seem proper and in conformity with law.

Respectfully submitted,

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In the
Supreme Court of the United States

OCTOBER TERM, 1925.

No. ———.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO AND CHARLES H. BELANGER, *Petitioners*,

vs.

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Official Report of the Opinions Delivered in the Courts Below.

A preliminary motion in this case has been reported in 3 Fed. (2d) 643. The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 840) has not been reported.

Ground on Which the Jurisdiction of This Court is Invoked.

This case comes to the Court on petition for certiorari. The judgment to be reviewed was entered February 8, 1926 (R. 869), within ninety days before the petition is filed.

Concise Statement of the Case.

The facts involved in this case have been stated concisely in the petition. The detailed facts relating to the position of the "Quadra," the test of speed of the "C-55" by which the jurisdictional distance from the Farallone Islands was determined, the evidence relating to the alleged conspiracy and certain evidence which was admitted as to other acts of the petitioners are set forth as introductory to the various points made in the argument following:

Argument.

1. The indictment did not charge a violation of the prohibition laws but charged a conspiracy to violate the National Prohibition Act and the Tariff Act of 1922. There was no justification for the admission in evidence at the trial of liquor and papers seized on a British boat outside of the three mile limit, since the treaty with Great Britain permitted only the seizure of a vessel for adjudication in accordance with the laws of the United States prohibiting the importation of liquor beverages.

This petition presents to your Honorable Court for adjudication for the first time highly important questions which have been differently adjudicated by several of the lower courts of the United States affecting the rights and liabilities of subjects of Great Britain and the properties thereof under the treaty between the United States and Great Britain upon the subject of alcoholic beverages, dated May 22, 1924, 43 Stat. L. 1761.

This record, it is confidently asserted, discloses that no case has ever been presented to this Honorable Court showing more serious violation of treaty stipulations. Speedy correction thereof by this Honorable Court in vindication of our national honor is the more imperative by reason of the fact that the concessions made in the pertinent treaty by Great Britain are gratuities upon the part of a friendly nation in aid of our enforcement of a law against her sub-

jects and property which makes that an offense in the United States which is not an offense in Great Britain or by the laws thereof in any land or upon any sea.

The indictment charges a conspiracy under Section 37 of the Penal Laws of the United States to violate the National Prohibition Act and the Tariff Act of 1922 (R. 11).

The means charged in the indictment to put into effect the conspiracy was a British ship of Canadian registry, the "Quadra," which, *it is charged,* was on September 9, 1924, loaded with liquor at Vancouver, Canada, destined for the Pacific Coast (R. 13).

The record nowhere shows the "Quadra" at any time within twelve miles of the Coast of the United States save at the time she was seized and searched by the officers of the United States Revenue Cutter Shawnee, at which time, while the British officers of the "Quadra" testified she was 13½ miles out, the American captain of the Shawnee testified she was 5.7 knots from the coast of the Farollone Islands. There is no claim by anyone that the "Quadra" at any time was ever any nearer the coast of the United States (R. 853).

Thus and there seized and searched against the protest of her captain and officers, she was unwillingly towed by the said United States cutter into the Port of San Francisco and there held (R. 37).

Indictments were there had against these petitioners, including the captain and the crew of the "Quadra" for conspiracy under the Penal Laws of the United States. This record does not disclose any action taken against the *vessel,* nor does the pending case involve any indictment under the Prohibition laws. The seizure was made October 12, 1924.

Parts of her cargo and papers thus seized were, over the objections of counsel for the said ship and its crew, admitted in evidence at the trial of the captain, officers, crew and others, under said indictment for conspirary as provided by Section 37 of the Penal Laws of the United States.

Conviction followed. The captain was sentenced to two years in prison at Leavenworth, and $1,000 fine; the first mate 13 months, others greater and others less (R. 79).

The court in denying a motion to suppress the evidence thus seized and in overruling objections to the admission thereof at the trial expressly justified the seizure and permitted the introduction of said evidence at said trial by the provisions of said treaty. Said defendants further objected and insisted that the position of the "Quadra" at the time of said seizure was a question of fact for the jury. The court overruled these objections, holding the determination of that question one of law for the court, and so ruling admitted the evidence upon the express ground that its seizure was justified by said treaty. The court predicated the admission of said evidence upon a finding, as follows:

> "The court will find that the ship was seized within the limits provided by the treaty with Great Britain,"

and, so finding, admitted the evidence so seized in a criminal trial including the officers and crew of said ship, British subjects, for conspiracy as provided in the Penal Laws of the United States (R. 856).

It is respectfully submitted to this Honorable Court that the said treaty does not justify such a seizure; that it does not justify the use of evidence so seized in a trial under an indictment founded upon the Penal Laws of the United States; that it does not justify or permit application of any of the terms of said treaty in any proceeding save under the Prohibition Laws of the United States.

There are three distinct classes of laws here pertinent: The Penal Laws of the United States, of which said section 37 is one; the Tariff Act of 1922, and the Prohibition Laws of the United States. Different penalties, forfeitures and conditions are in all prescribed. The rules of evidence in instances differ. The right of search and seizure in proceedings under each is by statute differently prescribed.

They are differently codified by Congress, in our books and so treated by the courts.

Under the Tariff Act of 1922, Sec. 593 (a) (b) (c), Sec. 447, smuggling occurs only when goods are unlawfully brought into the port and within the three-mile limit of the coast. A special section of that Tariff Law, Sec. 586, makes unlading within twelve miles illegal and punishable by fine only.

Under the Tariff laws a special statute or section thereof provides for search and seizure within twelve miles of the coast upon the occurence of therein specified conditions for which forfeiture must by law be prescribed. Sec. 581.

Under the Prohibition Laws, neither importation nor possession of alcoholic liquors is prohibited beyond the three-mile limit of the coast.

The Prohibition Laws, while specifically prescribing the conditions of search and seizure (Title II, Sec. 2), give no right whatsoever to seize and search for the intent to import or the importation of or the possession of liquors *beyond the three-mile limit of the coast.* This court has so held. *Cunard Steamship Co. v. Mellon,* 262 U. S., 100.

In the particular case, the "Quadra," standing 5.7 knots out from the coast of the United States, the Farollone Islands, thereby violated no Prohibition Law of the United States. Parenthetically, there not being a scintilla of evidence that it was there unlading or attempting to unlade or that she had ever attempted to or did unlade within twelve miles of our coast, there was by the "Quadra" no violation of the Tariff Laws of the United States.

Obviously, this treaty does not extend our criminal statutes. It does not in terms denounce a crime.

By Section 2 thereof the purpose of that seizure is expressly confined to the enforcement of our Prohibition Laws and the use thereof is by said section expressly confined to adjudications under our Prohibition Laws.

An exceedingly well reasoned opinion by Judge Hand, District Court for Southern District of New York, in *United*

States v. The Sagatind, 8 F. (2d) 788, is in point. The opinion is accurately syllabized as follows:

> "Vessel bearing cargo of whisky, which never physically arrived within limits of collection district, but which is being unladen by agency of smaller boats, is not constructively present within limits of collection district, so as to authorize seizure and forfeiture of either it or its cargo, under Tariff Act Sept. 21, 1922, §§ 585, 586, 592.
>
> "Vessel and its cargo, which have never physically arrived within collection district, held not subject to seizure and forfeiture, under Rev. St. § 3450 (Comp. St. § 6352), regardless of whether contact boats by which it was being unladen could reach land within an hour, since treaty, without which seizure must be invalid, applies only to prohibition, and not to customs act."

This is a proceeding under our Penal Laws and not a proceeding under our Prohibition Laws. Therefore, the justification of this seizure and the admission in evidence upon trial of the evidence seized under and by authority of the treaty, consisting of liquor on board of said boat and the papers belonging thereto and its officers, in a proceeding for Conspiracy under the Penal Laws of the United States, is not only not warranted by, but a gross violation of, the express words of the treaty.

When only does this treaty authorize seizure and for what purpose *only?*

The treaty in all its parts expressly confines its application to our Prohibition Laws and *their* enforcement.

The prelude is:

The High Contracting Parties, "being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States *on the subject of alcoholic beverages;* have decided to conclude a convention *for that purpose";*

Then follows Article I of the treaty, preserving intact the

three-mile limit of our territorial waters for the purposes of criminal and of judicial jurisdiction, as follows:

> "The High Contracting Parties declare that it is their firm intention to uphold the principle that *3 marine miles* extending from the coastline outwards and measured from low water mark *constitute the proper limits of territorial waters.*"

Article II, following, concedes the right of search "*outside of the territorial waters,*" "for the purpose of ascertaining whether the vessel or those on board are endeavoring to *import or have imported alcoholic beverages* into the United States, its territories or possessions in violation of the laws there in force." Section 3 merely fixes the limits of the treaty concessions "outside of the territorial waters."

The only *laws* which it is stipulated that it may aid, what may be seized, and the limits of the use to which the fruits of such search and seizure may be put, are then expressly defined by Section (2) of the treaty, as follows:

> "(2) If there is reasonable cause for belief that the *vessel* has committed or is committing or attempting to commit an offense against *the laws of the United States,* its territories or possessions *prohibiting the importation of alcoholic beverages,* the *vessel* may be seized and taken into a port of the United States, its territories or possessions for *adjudication* in accordance with *such* laws."

The only laws *prohibiting* the importation of liquors into the United States are the Prohibition Laws. By that provision of the treaty it is stipulated:

(a) There must be a reasonable cause to believe "that the vessel has committed or is commiting or is about to commit an offense against our laws *prohibiting the importation of alcoholic beverages.*" This does not include the right to search for suspected violation of our Tariff Laws, nor does

in include the right to search for suspected violation of our Penal Laws. The treaty expressly confines the right to search for suspected violations of our Prohibition Laws to do which the suspected purpose must be to bring liquor within 3 marine miles of our coast.

(b) Of what is "seizure" and "adjudication" permitted? Of the owners of the vessel or cargo in Canada? Of such persons by means of some other vessel? Of the captain or crew of the particular vessel? No. That is not the treaty stipulation. The express treaty stipulation is that after searching the vessel and all on board if there is reasonable ground to believe the particular *"vessel"* itself has committed or is about to commit an offense against our laws *prohibiting the importation of liquors,* the *vessel* only may be seized and *adjudicated* under our Prohibition Laws *and does not extend to either the crew or cargo.* It is significant that while "those on board" were in mind and search thereof permitted in (1) of the treaty, neither seizure nor adjudication as to *them* is permitted by Sec. (2) thereof.

(c) Furthermore, for what purpose may the ship be seized? For adjudication under our Prohibition Laws only and not our Tariff Laws or Penal Laws. The treaty expressly so confines the conceded right. It limits what may be seized and the purpose of such seizure in express words to "the *vessel* may be seized and taken into a port of the United States for *adjudication* in accordance with *such* laws." "*Such* laws" is referable back to the phrase "*prohibiting the importation of alcoholic beverages.*" There is, therefore, no right accorded by the treaty to seize a British ship for any other purpose than for adjudication or to adjudicate as to it under any other than the Prohibition Laws of the United States. That conceded treaty right does not include the right to adjudicate under our Penal Laws, or the Tariff Laws, *or even of parts of the Prohibition Laws* of the United States, but is by the terms of the treaty expressly confined *to that part of our Prohibition Laws* relating to "the *importation* of alcoholic beverages." This is

not such a proceeding, but one under the Penal Laws of the United States.

2. In interpreting Article 2, Section 3, of the treaty with Great Britain whereby the right of search and seizure is limited to a distance that can be traversed in one hour by the vessel suspected or by such other vessel as is intended to convey the liquor in question to the United States, such speed should be determined only under substantially similar conditions, and it was error and in violation of such treaty to determine the jurisdictional question by testing the speed of the vessel unloaded on the quiet waters of San Francisco Bay instead of loaded and in the open waters of the Pacific, especially as such test was made at a date four months after the seizure.

The facts in this regard are without contradiction: At the time of seizure the "Quadra" was claimed by the Coast Guard Service to be 5.7 miles from the North Farallones (a small island 25 miles off the Coast of California), and claimed by petitioners to be 13.6 miles therefrom. At the time of seizure alongside thereof was the small motor-boat C-55 with a crew of two men *and a cargo of 3304 pounds of liquor.* The date of seizure was October 12, 1924.

The Treaty provides in part:

> "The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense."

No claim was made that the "Quadra" intended to bring liquor into the United States.

The Treaty further provides:

> "In case, however, in which the liquor *is intended to be conveyed to the United States,* its territories or pos-

sessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised."

No test of the speed of this motorboat was made at the time of seizure, nor was it run from the point of seizure to the Farallone Islands at the time or any other time to determine its capacity to reach it in an hour.

All that was done was that the speed of the "C-55" was tested with three men on board *and no cargo* on San Francisco Bay, on February 17, 1925, (four months after the seizure), at which time the speed was 6.6 per hour.

It is respectfully urged that under familiar principles of law this experiment was no evidence at all of the fact sought to be portrayed thereby, viz: the ability of the C-55 to traverse 5.7 miles an hour on the open waters of the Pacific Ocean with two men and a cargo of 3300 lbs. of liquor.

The above résumé of evidence is the entire basis of the Trial Court's decision that the "Quadra" had been seized within the limits prescribed by the treaty.

No explanation was given by the government for its failure to present satisfactory evidence of the speed of the C-55.

Justice Thomas, in a learned opinion considering the above Treaty, passes upon this identical situation, and declares in *The Over the Top*, 5 Fed. (2nd) 838, as follows:

> *"There is absolutely no evidence in the record as to how far the sea sled could travel in an hour and in the dark with 25 cases of liquor and three men aboard as on the night it left the schooner Over the Top with wind, weather and tide as it in fact existed on the night in question.*
>
> "As we are dealing here with fines and forfeitures, I cannot assume that this language was intended to cover an hypothetical case; that the seizure would be treated as legal if accomplished at a point constituting

the greatest distance which the unladen ship could traverse in one hour at her maximum speed under the most favorable conditions of wind and tide. It seems to me that a rational construction requires us to measure the distance by the actual speed of the boat accomplished from the point of capture to the nearest available point on the coast in normal wind and tide and under the same conditions as pertain at the time of the seizure. Nor can I see any reason for applying any different rule when the distance is to be measured by the speed of the carrier from ship to coast. *It is the speed of the boat conveying liquor, and when it is engaged in conveying liquor to the United States, that must be determined. When conveying liquor, her speed may be below that of her speed when empty.*"

The foregoing opinion solidly and soundly supports our position that the rights exercised by the United States under the Treaty were not exercised at a distance from the shores thereof which could be traversed by the C-55 in one hour.

Ruling Case Law, Vol. II, Sec. 190, states:

"An experiment introduced for the purpose of proving that an alleged result is obtained by a certain act or operation, considered as existing in the case, should not be permitted unless the condition and circumstances under which the experiment is made are similar to those shown to have actually existed in the case."

Vide: Vol. 22, C. J. EVIDENCE, 840, p. 758; Sec. 852 states:

"In order that an experiment shall possess sufficient probative value to warrant the admission of evidence thereof, it is necessary that the circumstances under which the experiment is made shall have been similar to the circumstances prevailing at the time of the occurrence involved in the controversy, *and if the conditions were dissimilar in an essential particular, the evidence is rejected, especially if the conditions were more favorable to the party offering the evidence* (p. 758)."

Wherefore, all evidence the result of seizure of the "Quadra" was inadmissible.

This point was brought squarely to the attention of the Circuit Court of Appeals and is discussed in the opinion (R. 854) where the Court said:

> "The evidence shows that the "C-55" had no load when her speed was tested on the 17th of February and an objection was reserved to any evidence of her speed unless the evidence was confined to conditions substantially identical with those obtaining at the time of the seizure. This contention is supported by the Over the Top, 5 F. (2d) 838, a decision rendered by the District Court for Connecticut. We think this construction of the treaty is unwarranted by the language used: 'The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States its territories or possessions than can be traversed in one hour by the vessel.' We do not find any qualifying words after 'vessel' such as 'when loaded' or 'under conditions of wind and tide prevailing at the time of seizure.' We should not read into the treaty limitations which have not been written therein."

In this the Circuit Court of Appeals clearly erred. The reasonable meaning of the treaty clearly intends that the speed shall be determined with conditions substantially similar to those existing at the time of the seizure. As this is a question which will arise in every case depending on the speed of the vessels, the error of the Court constitutes a serious misinterpretation of the treaty.

3. The treaty with Great Britain permits seizures "for adjudication" of "the vessel" only, and does not permit a criminal prosecution of British citizens seized beyond the territorial waters of the United States. The indictment being based upon this treaty, a demurrer which was filed thereto should have been sustained.

What may be seized? The British captain and crew? The British captain and crew for criminal prosecution? No. The treaty expressly confines that which may be seized upon the conditions found to the "*vessel*" only and that for "adjudication." There is no right given by this treaty to seize the captain and crew for any purpose.

Even conceding the right under the treaty to seize and bring into an American port the British captain and crew from beyond the three-mile limit, this treaty provides that when so legally seized they can only be proceeded against under that part of our Prohibition Laws which prohibit *importation* of alcoholic beverages, which can only be done by bringing them within the three-mile limit of our coast before any crime is committed and which there must be reason to suspect before any seizure is justified.

The treaty gives no right whatsoever, when seized thereunder, to proceed *under any law* against the *crew*, criminal or otherwise.

When these treaty rights were conceded by the plenipotentiaries of Great Britain undoubtedly they had before them solely and only the Prohibition Laws of the United States. The treaty itself expressly shows that such laws were the sole subject of the negotiations; and that when they signed this treaty, therefore, they did not intend and they expressly provided that no other or greater penalties should by virtue of this treaty be inflicted upon the subjects of Great Britain than those provided by the Prohibition Laws of the United States. The most severe penalty thereby provided is 1 year imprisonment and one thousand dollars fine (Fed. Stats. Annotated p. 9.—). The sentences allowed under Sec. 37 of the Penal Code of the United States and here imposed in some instances being 2 years imprisonment and ten thousand dollars fine.

To justify the seizure of these defendants, the crew of the Quadra, and to justify the conviction of any of these defendants by a seizure upon the high seas, admittedly 5.7 miles from the coast of the United States, to convict and

jail any of them under our Penal Laws and sentence them for terms far in excess of any penalties provided by our Prohibition Laws, securing said convictions and justifying the same on evidence authorized solely by the terms of said treaty, is, to say the least, a gross abuse of said treaty stipulations and finds no warrant in its terms.

It is obvious that the treaty does not extend the Prohibition Laws of the United States, nor the jurisdiction of our courts in their enforcement. By the terms of the treaty itself, seizures thereunder are to be adjudicated *according* to our Prohibition Laws.

Whether or not a treaty is self-executing is not here controlling. If it is not self-executing, and is not by Act of Congress executed, it has no place in these judicial proceedings. In that status, its application to the instant cases and the introduction of evidence therein seized by virtue of the terms of the treaty not only constitute obvious error, but a grave abuse of the treaty provisions in a proceeding against subjects of the contracting party. If the treaty is self-executing, it can by virtue of its terms be invoked solely in aid of the enforcement of our Prohibition Laws and is not applicable in this proceeding as before shown. In that status the question of whether or not it is self-executing is in the case, however, for if it is self-executing the question is here presented whether or not its terms are exclusive of all other statutory procedure in all cases of seizure and adjudication thereunder made. Article IV of the treaty supports that construction.

In said instances, it is respectfully submitted that the application of the treaty to this proceeding and the introduction of the evidence seized by virtue of its authority constitutes error and serious abuse of the treaty stipulations.

The right to adjudicate the conduct of *those on board* (in these words the Treaty refers to the officers and crew) thus, does not exist.

In this connection this thought compels consideration: The conduct of petitioners on board the "Quadra" was

no more criminal than that of the smugglers of another day. Statutes against smuggling and to protect the revenue have been in existence for 135 years, countless foreign ships have been sei , confiscated and forfeited. Yet after an exhaustive search our Federal cases fail to disclose any case of criminal prosecution of foreigners on board foreign ships for such violations beyond the three mile limit until the passage of the National Prohibition Act, aye, even further, *until the case at bar.*

Let us consider now the indictment which contained only one count.

It was based on the treaty.

The *first* part recites the ratification, force and effect of the treaty (R. 6) and then quotes at length article II of the treaty (R. 8-9). The *third* part, embracing only four overt acts, adopts the very phraseology of the treaty, *e. g.* "a distance of less than 12 miles" "which distance could be traversed in less than one hour" (R. 14), "prohibited, unlawful and in violation of this convention, agreement and treaty" "and intended for use in violation of said treaty" (R. 15), "and within a distance that could be traversed in less than one hour, etc." (R. 17); the *second* is the charging part of the indictment alleging that the defendants combined, conspired, etc. "to commit *certain offenses* against the United States, that is to say;" (R. 11). Then come two paragraphs designated, a and b; "a, wilfully, etc. * * * the said acts then and there unlawful and prohibited and contrary to * * * the convention, agreement and treaty and * * * in violation of said treaty;" and "b, wilfully, etc. * * * the said acts then and there unlawful and prohibited and contrary to * * * the convention, agreement and treaty, etc., and * * * in violation of said treaty."

The trial court sustained the finding of the Grand Jury, denied the motion to quash (R. 41) specifications seventh and ninth thereof (R. 30) and overruled the demurrer

(R. 41) specifications 13 and 17 thereof (R. 25-26), and motions in arrest of judgment (R. 67-71). The trial jurors were given the indictment as found to guide their deliberations (R. 611).

The Circuit Court of Appeals, on the contrary admits "there can be no criminal offense in violating the treaty," (R. 845) but says "the *reference* to the treaty may be rejected as surplusage (R. 845). This is not a 'reference;'—not a matter of form, nor marginal endorsement, nor erroneous caption; it is a matter of substance—the very charge laid.

Though the charge in an indictment seems erroneous to the 'better instructed mind' of a court, it cannot, least of all after trial thereon, be expunged as surplusage because it is the charge and finding of the grand jury in their ignorance. To hold otherwise is subversive of the nature and value of the institution of the Grand Jury. The security of personal rights forbids such a decision.

Ex parte Bain, 30 L. ed. 849; 121 U. S. 1, (unchallenged and repeatedly quoted), holds:

> "The party can only be tried upon the indictment as found by the grand jury and *especially upon all its language found in the charging part of that indictment.*"
>
> "While it may seem to the court with *its better instructed mind* * * * that it was neither necessary nor reasonable that the grand jury should attach importance to the (language used) * * * yet it is not impossible nor very improbable that the grand jury looked mainly to (that)."
>
> "How can it be said that with these word stricken out, it is the indictment which was found by the grand jury."
>
> "He goes on to argue that the grand jury would have found the indictment without this language. But it is not for the court to say whether they would or not."

U. S. v. Goodwin, 20 Fed. 240, holds:

"And it must be that if the law supposed to govern the offense be set out in the indictment, and the grand jury present it to the court as their finding, it *cannot be rejected, if erroneous*, because it was the ground for their action. * * * If there had been no allegation in the indictment as to the law, the indictment might have been sustained; but as these allegations make it quite evident that the finding of the grand jury was upon (this law), I think that the judgment must be arrested. * * * But if the indictment set out the offense with greater particularity than is required, the proof must correspond with the averments; *nothing* connected with the offense is regarded as *surplusage*, *U. S. v. Brown*, 3 McLean, 233."

Amendment V provides: "No person shall be held to answer * * * unless on a presentment or indictment of a grand jury."

Amendment VI provides: "The accused shall enjoy the right * * * to be informed of the nature and cause of the accusation."

Ex parte Bain, supra, further holds:

"*If it lies within the province of a court to change the charging part* of an indictment to suit its own notions of what it ought to have been * * * the great importance which the common law attaches to an indictment by a grand jury as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says 'no person shall be held to answer,' *may be frittered away* until its value is almost destroyed."

U. S. v. Howard, 132 Fed. at 344, holds:

"The Supreme Court of the United States adheres very strictly to the rule that there can be no amendment of an indictment even in matters that are immaterial without a violation of the Fifth Amendment of the Constitution; then, of course, it can no more be amended under the guise of importing into it outside records or documents by implication or intendment than by more direct process, which is not permitted under the Constitution."

U. S. v. Harmon, 34 Fed. 872, holds:

> "The accused cannot be put upon trial except upon the presentment of a grand jury, and all the essentials of the accusation must be presented by the grand jury in their indictment; and neither the court nor parties by consent can add to or *take from the indictment.*"

Renigar v. U. S., 172 Fed. 646, holds:

> "When the Constitution enumerated those guarantees intended for the security of personal rights, and among them that 'no person shall be held to answer unless on the presentment or indictment of the grand jury,' it manifestly intended a valid indictment found and presented according to those ancient rules and safeguards, etc. * * * Joyce on Indictments in considering the Fifth Amendment says: 'It was manifestly designed and intended for the security of personal rights.'"

4. Assuming that the treaty permits criminal prosecution, the place of seizure must be within the terms of the treaty, and on an indictment setting up the treaty it was error for the Court to determine the distance of the seized boat from the United States as a preliminary question of fact and not to leave the same to the jury.

If the right existed under the Treaty to bring Ford, Harris and Evelyn, the Captain, First and Second Officers of the "Quadra" into the United States from a point on the high seas, for adjudication under our laws, said right could only be exercised within a prescribed area. Thus, their criminal responsibility was co-extensive with that area and became a question of fact for the jury, on a parity with the question of venue, which, when dependent upon physical presence within a given area, always is a question of fact for the jury.

This question was one concerning which the trial judge possessed grave doubt and in the course of the trial permitted an extensive legal argument after an adjournment for the purpose of preparation thereof. He finally determined it was a question of law, and, as a matter of law affecting the guilt or innocence of petitioners Ford, Harris and Evelyn, found this fact: That the "Quadra" was seized within the limits prescribed by the Treaty between the United States and Great Britain.

This was error under the following cases:

U. S. v. Richards, 149 Fed. 455;
U. S. v. Saunders, 27 Fed. Cas. No. 16220;
Lennan v. Hamburg & Am. S. S. Co., 73 N. Y. App. Div. 358, 361;
U. S. v. Meagher, 37 Fed. 878;
U. S. v. Lewis, 111 Fed. 630.

The Circuit Court has confused our contention in this regard with the situation passed upon by your Honorable Court in *Steele v. United States,* 267 U. S. 505.

The points are totally dissimilar.

These petitioners, Ford, Harris and Evelyn, were thus deprived of their rights under the Sixth Amendment, which guarantees them the right of trial by an impartial jury.

5. Section 37 of the Criminal Code (Conspiracy Statute), under which petitioners Ford, Harris and Evelyn were charged, has no Extra-Territorial effect.

Briefly, as to the facts: Petitioners Ford, Harris and Evelyn, citizens, native born, of Great Britain, were forcibly brought into the United States from the high seas and arrested on arrival, and subsequently indicted for violating the conspiracy law, the language of which is well known to the Court.

Is said conspiracy statute operative on the high seas or in the Dominion of Canada?

The territorial limits of the United States fixed to extend a marine league from shore is well understood.

That the "Quadra" formed part of the territory of the flag she flew admits of little doubt.

Our subject involves *sovereignty, obedience to law, the meaning of unlawful.* There is no limit to the sources of precedent.

Our position that the conspiracy law is not operative beyond the territorial jurisdiction of the country enacting it is sustained by Chief Justice Marshall in the following cases:

In *Rose v. Himely,* 4 Cranch (U. S.) 241, 279, he says:

> "It is conceded that the legislation of every country is territorial; that beyond its own territory, it can only affect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law, or to enforce obedience to that law without the circle in which that law operates * * *. A seizure of a person not a subject, or a vessel not belonging to a subject, made on the high seas, for the breach of a municipal regulation, is an act which the sovereign cannot authorize."

In *The Antelope,* 10 Wheat. p. 120, we find:

> "No nation can prescribe a rule for others; none can make a law of nations; and this traffic remains lawful for those whose governments have not forbidden it.
>
> "If it is consistent with the law of nations, it cannot be piracy. It can be made so only by statute, and the obligations of the statute cannot transcend the legislative power of the state which may exact it."

See also *U. S. v. Palmer,* 3 Wheat. 610.

In the *Appolon case,* 9 Wheat. 362, Justice Story declares:

"The law of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction."

Vide: Beattie v. State, 84 S. W. 477;
LaNinfa, 75 Fed. 513;
Vol. 14 Eng. & Emp. Dig. pp. 132 *et seq.*

Also, *R. v. Waina and Swatoa,* 2 N. S. W. Rep., p. 403, wherein the Chief Justice says:

"My opinion is that if a number of foreigners, such as these, joined in a common attack upon a ship, and some went on board, whilst others attacked her by arrows from a distance, only those who got on board are liable, and you can not make those liable who did not come within the jurisdiction, for acts done by those who did."

Moore's Digest on International Law, Vol. 2, is replete with confirmation of the view that our penal statutes have no extraterritorial effect.

Our State Department has frequently acted in accord with the view here expressed. The celebated Cutting case in Mexico, referred to by all present day International Law writers, and the case of Warren and Costello, claimed participants in the Jacmel Expedition in Ireland, are illustrations.

Further, the recent views expressed by your Honorable Court in *Cunard v. Mellon,* 262 U. S. 100, are in accord with this view.

We feel that we find full accord with the view here expressed in the case of your Honorable Court, *American Banana Co. vs. United Fruit Co.,* 213 U. S. 347.

The following is from said opinion:

"It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place, the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States, and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress."

"For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent. *Phillips v. Eyre,* L. R. 4 Q. B. 225, 239, L. R. 6 Q. B. 1, 28; *Dicey,* Confl. L. 2d. ed. 647. See also Appendix, 724, 726, note 2.

"The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Bain,* L. R. 12 Ch. Div. 522, 528; *State v. Carter,* 27 N. J. L. 499; *People v. Merrill,* 2 Park Crim. Rep. 590, 596. Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute, the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged, but need not be discussed."

6. The venue of the offense was not shown to be in the Northern District of California. The Sixth Amendment, the conspiracy statute, and Section 731 of the revised statutes which permits the prosecution in either district of an offense begun in one jurisdictional district and completed in another, do not permit the prosecution in a District Court of the United States of a conspiracy begun outside any district of the United States.

Petitioners Ford, Harris and Evelyn, British subjects, officers of the "Quadra," a British vessel, never within the United States of America, and admittedly seized at a point beyond the three mile limit, contended at the trial and at every stage of this proceeding, that every act of said last named petitioners having occurred in the Dominion of Canada or on the high seas and without the territorial limits of the United States, the venue of any offense as to them had not been shown and that they never performed an act nor entered into a conspiracy in the Northern District of California or any other District of the United States.

On the conclusion of the Government's case counsel for these petitioners, Ford, Harris and Evelyn, moved for a directed verdict, indicating among other things the following grounds:

1. "The venue as to the defendants, officers, master, and members of the crew, has not been shown."
2. "The Court has not jurisdiction as to these moving defendants of the subject matter of the offense pleaded or attempted to be pleaded in this indictment, or of the conduct of these moving defendants at all."
3. "The evidence was insufficient to justify and/or support a verdict." (R. 319, 322.)

This motion for a directed verdict was renewed at the conclusion of the defendants' case (R. 539) and again at the conclusion of the entire case (R. 590). The denial of said motions form the basis of assignment of errors numbers 95 (R. 739), 104 (R. 751), 109 (R. 754).

The Sixth Amendment to the Constitution of the United States guarantees the right of trial by jury in the District where the crime is committed. The pertinent language thereof is as follows:

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and *District wherein the crime shall have been committed,* * * * "

Section 731 of the Revised Statutes (Section 42 of the Judicial Code) provides:

> "When any offense against the United States is begun in one Judicial District and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined and punished in either District, in the same manner as if it had been actually and wholly committed therein."

The language of Section 731 of the Revised Statutes above set forth bears more than a passing scrutiny; it declares that a crime *begun in one judicial district* and completed in another *shall be deemed to have been committed in either.*

The Circuit Court, although sanctioning the opinion of the Trial Court, realized this question to be one of importance and declares:

> "The question of venue is less readily answered. It was incumbent on the Government to prove that these plaintiffs in error were parties to a crime committed in the Northern District of California."

The case of *Hyde v. U. S.,* 225 U. S. 347, (cited by the Circuit Court) involved the question of the right to charge and try a conspiracy in the District of Columbia and give to the Supreme Court of said District jurisdiction where the conspiracy was formed in California and an overt act was

committed in Washington, D. C. When petition for writ of certiorari to review this question was presented to your Honorable Court, quoting from the opinion:

> "The Attorney General assented to the granting of the writ, he saying that 'the determination of this case depends upon the principles of law governing conspiracy' and that in view of the decisions of the lower courts and of the numerous prosecutions under the conspiracy statute, 'it was of vital importance to the United States, as well as to its citizens, that these principles be definitely settled by this court.' "

Justice McKenna, delivering the majority opinion of your Honorable Court and after an analysis of the relative position the combination or *conspiracy* and the *overt* act bears to the crime defined by the conspiracy statute, sustained the jurisdiction of said District of Columbia on the theory that a conspiracy comes within the meaning of Sec. 731. Therein the learned Justice declares:

> "If the unlawful combination and the overt act constitute the offense, as stated in Hyde vs. Shine, marking its beginning and its execution or a step to its execution, Sec. 731 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 585) must be applied. That section provides that 'when any offense against the United States is begun in one judicial circuit and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.' This provision takes an emphasis of signification from the fact that it was originally a part of the same section of the statute which defined conspiracy,—that is, Sec. 30 of the act of March 2, 1867 (14 Stat. at L. 484, chap. 169, U. S. Comp. Stat. 1901, p. 585)."

However, in said *Hyde* case we find a vigorous dissent by Justice Holmes, concurred in by Justices Lurton, Hughes and Lamar.

Therein Justice Holmes declares:

> "The cases in this court have agreed that the statute has not made the overt act a part of the crime, which still remains the conspiracy alone. By the same reasoning the overt act gives no ground for the application of Rev. Stat. Sec. 731, U. S. Comp. Stat. 1901, p. 585, creating a double jurisdiction when an offense against the United States is begun in one district and completed in another. The act is an element in some other crime, as is stated in so many words in *Hyde v. Shine,* 199 U. S. 62, 76; 50 L. Ed. 90, 94; 25 Sup. Ct. Rep. 760, quoting the well known statement in *United States v. Britton,* 108 U. S. 199, 204; 27 L. Ed. 698, 700; 2 Sup. Ct. Rep. 531, that the statutory requirement merely affords a *locus penitentia.*"

Thus, your Honorable Court, divided five to four on this broad principle of whether double jurisdiction exists under Sec. 731 R. S. to prosecute a conspiracy in the district where an overt act is committed in addition to the district of formation of conspiracy.

Now, in this case, we ask your Honorable Court to review the important question here involving the constitutional rights of these petitioners: *Whether a conspiracy begun outside any district of the United States is cognizable in a District Court thereof.*

We seek to review here the judgment of conviction primarily—the judgment of affirmance secondarily. There is a wide distinction between the two.

That distinction is manifest from a consideration of the following:

The theory of conviction is exemplified in the following instruction of the Trial Court:

The Trial Court instructed the jury as follows:

> "Now, with that long definition of what constitutes a conspiracy, gentlemen, what is the nature and gist of the charge here?

"The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various (483) vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

"It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liqour was for delivery at La Libertad; that it was the intent and purpose however for that ship to come as close as she dared to the Coast of California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

"It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

Now, gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment."

(R. 601, 602.)

The theory of affirmance is equally well exemplified as follows:

The Circuit Court of Appeals in reaching its decision upon this question of venue declares as follows:

"On the entire case the conclusion is warranted that about the 1st of May, 1924, Quartararo and Sam Crivello, within the Northern District of California conspired to import and possess liquor; that Belanger and his corporation either had an understanding with Quartararo at that time or shortly thereafter became parties to the conspiracy; and that the departure of the Quadra with her cargo from Vancouver on the 9th of September, was pursuant to the same conspiracy." (R. 849.)

Further:

"It is contended that there is a distinction between a conspiracy formed in one state which is carried out in another state and a conspiracy formed or effected in a foreign country. In this case we are concerned with a conspiracy formed in the Northern District of California which was effected in part by acts which took place in Canada and on the high seas."

The Theory of Conviction.

Before this trial started objection was made to the jurisdiction of the persons of the defendants Ford, Harris and Evelyn; it was overruled. Thereafter, before the introduction of any testimony, objection was made that the Court was without jurisdiction of the subject-matter of the acts and conduct of petitioners Ford, Harris and Evelyn and was overruled.

At the conclusion of the case, in addition to the instruction of the trial Judge, above set forth, exemplifying the theory of conviction, with particular reference to these petitioners Ford, Harris and Evelyn, the trial court gave the following instructions:

As to Petitioner Ford:

"Now first, Gentlemen, as to the captain of the ship 'Quadra'; If you find from the evidence, Gentlemen, that Captain Ford took command of the steamer 'Quadra,' loaded her with intoxicating liquor sailed her

to the neighborhood of our shore and there proceeded to cause the liquor to be disembarked from her hold into the small vessels and brought to the coast of California, and if you find at the same time that he did that in conjunction with or in understanding with any person whomsoverer then you must find him guilty of the crime as charged.

"It makes no difference, Gentlemen, so far as Captain Ford is concerned whether or not he believed that it was legal or illegal to deliver liquor from the sides of his ship into the small boats for delivery here. The Court holds that it was illegal. Therefore whether he knew it, or not, is of no consequence."

Further, as to Petitioners Harris and Evelyn:

"To sum up then in regard to the officers, other than the captain, and the crew, if you find, of course, that they knew the purposes of the ship when she sailed then you must find them guilty; but if you believe that they did not know the purpose when she sailed then you must determine the two questions, whether or not they subsequently found out her purpose was unlawful, and that they knew that it was unlawful."

The giving of these instructions were assigned as error at the time (on this point of jurisdiction). (612) It is covered by the assignment of error No. 118.

We ask your Honorable Court to review the giving of said instructions as they manifestly constitute error.

From the foregoing we think the conclusion is unescapable in the light of the Sixth Amendment, Sec. 731, R. S. and said case of *Hyde vs. U. S., supra*, that these petitioners Ford, Harris and Evelyn were convicted of a crime, the venue of which was never shown and that their motions for a directed verdict should have been granted and the giving of said instructions above set forth was prejudicial error.

The Theory of Affirmance.

In the instant case, to properly lay the venue thereof, the substantive offense must have occured in the Bay of San Francisco. With this thought in view, the Court of Appeals, notwithstanding the trial court never indicated such a proposition, and notwithstanding that there is nothing warranting such a conclusion in the record, has determined that petitioners, Ford, Harris and Evelyn adhered to a conspiracy already in existence in the Bay of San Francisco and that their ship, the "Quadra," left Vancouver pursuant to said conspiracy.

Said conclusion is destroyed in its entirety in two ways:

(1) Adherence to a conspiracy between Vincent Quartararo and Sam Crivello to unload liquor from the steamer "Norburn" in the month of May, 1924, was not the conspiracy upon which they were on trial;

(2) The record will not support the conclusion *and the jury never determined*, that Ford, Harris, Evelyn or the petitioner Belanger joined a conspiracy already in existence between Quartararo and Crivello; nor will the record support the conclusion of the Circuit Court that the steamer "Quadra" left Vancouver pursuant to said combination.

Consideration of this question, being one of mixed law and fact, brings to the fore an additional ground for invoking the jurisdiction of your Honorable Court which will be treated in conjunction with the primary subject-matter, *venue*.

Under your rules, not determinative of your jurisdiction but indicative therof, it becomes proper to ask for a review of the decision of the Circuit Court of Appeals on an important question of general law, decided in a way probably untenable or in conflict with the weight of authority.

The Decision of the Circuit Court of Appeals to the Effect that Ford, Harris and Evelyn Left Vancouver Pursuant to a Conspiracy Already in Existence in the Bay of San Francisco and that Their Acts Show Adherence Thereto is Contrary to the Opinion of this Same Circuit in the Case of United States vs. Terry, 7 (F. 2d) 30, Which Opinion We Deem Tenable and in Accord with the Weight of Authority and the Opinion in the Instant Case We Deem Untenable.

Consideration of this question goes hand in hand with the consideration of the question of whether adherence to a conspiracy between Quartararo and Crivello was the conspiracy upon which petitioners Ford, Harris and Evelyn are on trial.

We believe that the Terry case, *supra,* correctly states the law and that the letter and spirit thereof has been nullified in the instant case.

In said Terry case Justice Rudkin uses the following opposite language:

> "In ruling upon the admission of testimony, and in the charge to the jury, the court proceeded upon the theory that some of the defendants might be convicted of one conspiracy and some of another; that is, that the plaintiff in error and the defendant Zucker might be convicted of a conspiracy to transport, possess, or sell intoxicating liquor at Bodega Bay, and the remaining defendants of a conspiracy to transport, possess, or sell intoxicating liquor at Allen's Wharf, even though the two conspiracies and the parties thereto were entirely different. The rulings admit of no other construction.
>
> "If, however, the charge of conspiracy in the indictment is merely that all the defendants had a similar general purpose in view, and that each of four groups of persons were co-operating without any privity each with the other, and not towards the same common end, but toward separate ends similar in character, such a combination would not constitute a single conspiracy,

but several conspiracies, which not only could not be joined in one count, but not even in one indictment. *United States v. McConnel* (D. C.) 285 F. 164.

"In other words, a conspiracy is not an omnibus charge, under which you can prove anything and everything, and convict of the sins of a lifetime. For these reasons the rulings complained of are erroneous and call for a reversal. Proof that the plaintiff in error was guilty of another crime was in itself prejudicial, and an instruction that he might be convicted of a crime not charged in the indictment cannot be sustained."

Test the instant case by the rule in the Terry case. Petitioners Ford, Harris, Evelyn and Belanger are charged with Quartararo and fifty-five other persons with a conspiracy, the purpose of which was to violate the Tariff Act, National Prohibition Act, and the Treaty.

Elsewhere is discussed the question of the sufficiency of the indictment. The Circuit Court of Appeals, in passing on its sufficiency, declares the reference to the Treaty to be surplusage. This we do not think is true, but at all events, for the purposes of the reasons here urged, the Treaty was an indication to all of the accused that the conspiracy had to do with a British vessel; each and every overt act alleged therein refers specifically to the bringing of liquor from the "Quadra."

At the trial the United States Attorney, in his statement to the jury panel, declared:

"The case that is presented to you this morning involves what is commonly known as the 'Quadra' case, and is a conspiracy indictment returned by the Grand Jury in this district against some 60 odd defendants. There are present before you in this indictment 23 members which constitute the officers and members of the crew of the ship 'Quadra,' which is a ship of British Registry, coming from Vancouver to San Francisco; and, as set out in the indictment, she was seized by the

coast guard officers shortly or a little way beyond the Farallone Islands on October 12 of last year, the ship being loaded completely with liquor; in addition to these men there are two men who were seized the night preceding that, on October 11, 1924, in one of the small motor-boats out in San Francisco Bay as having made contact with the 'Quadra.'

"In addition to that there are two men who were seized upon a small motor-boat at the time the 'Quadra' was seized, which was joined onto the 'Quadra' taking cargo at that particular time.

"In addition to these men there are two men who are directors of the Consolidated Exportation Limited Company, the company which owned the cargo of the 'Quadra'; and in addition one other man by the name of Quartararo who was apprehended in San Francisco as the representative of this company here.

"The indictment is a conspiracy indictment alleging that these individuals formed a conspiracy for the purpose of violating the laws of the United States, namely, the Tariff Law which prohibits the importation of certain goods into the United States, and also the National Prohibition Act which prohibits the transportation or importation of liquor into this country.

"I think, Gentlemen, that that in brief sets out to you the matters sufficiently so that you may have an understanding as to the general charge that is made against these particular defendants who are on trial here this morning." (R. 82-83.)

In his opening statement (R. 88) the United States Attorney reiterated the conspiracy for which defendants were on trial. The part played by each defendant on trial is briefly set forth. No mention is made in either of said statements to the Steamer "Norburn" or to any combination between Quartararo and Sam Crivello in May, 1924, no mention made of a general conspiracy to take liquor from any boat at any time; everything therein is solely addressed to connection with the "Quadra" and the unloading thereof.

Then, at the conclusion of the case, a charge on the law to the jury, with no mention of a conspiracy or combination between Sam Crivello and Vincent Quartararo in May, 1924; no mention of the Steamer "Norburn"; and again a confinement of the instant case to a conspiracy relating to the "Quadra."

The summing up by the trial judge in the treatment of this question of venue above fully set forth is clearly indicative of the truth of our position.

Further reference to the record along this line would be to multiply and burden rather than clarify.

The admission of this very evidence concerning the relation between Sam Crivello and Vincent Quartararo in May, 1924, is assigned and treated as error. We believe the Court will so find and, of necessity, then the ruling of the Circuit Court on the question of venue was error.

But, apart from the question of its admissibility in evidence, the record is incapable of supporting, in the light of the Terry case, *supra,* the conclusion that the combination between Sam Crivello and Quartararo, two defendants, constituted the offense with which sixty defendants were charged and thirty were tried. The issue of adherence thereto was never passed upon by the jury. This theory of the Circuit Court of Appeals in the instant case is based in part on the case of *Thomas vs. United States,* 156 Fed. 897, cited by it.

On the point here involved, however, in the *Thomas* case, *supra,* the Court determined, as follows:

> "It is earnestly contended that there was not sufficient evidence to connect defendant Taggart with the particular conspiracy charged in the indictment. While the proof does not connect him with the incipiency of that conspiracy, it is claimed by the government that facts appear from which it may be reasonably inferred that he came into it after it was concocted with full knowledge of its existence and character and with

a purpose of furthering its design. If such are the facts, he was as much a conspirator as if he participated in its original formation. *United States v. Newton* (D. C.) 52 Fed. 280; *United States v. Barrett* (C. C.) 65 Fed. 62; *United States v. Cassidy* (D. C.) 67 Fed. 698. *This contention presents a doubtful question of fact, and as the case, for reasons hereafter stated, must be remanded for another trial when new evidence may be presented on the issue, it is not deemed necessary or wise to further consider it at the present time.''*

We respectfully urge that in this respect the Circuit Court of Appeals has attempted in the instant case to determine the question of fact solely within the province of the jury and never determined by it.

The record merely shows the employment by Quartararo of a fisherman named Sam Crivello to take liquor from the steamer "Norburn" in April or May, 1924. There is nothing in the record permitting the conclusion that the presence of the Steamer "Norburn" off the coast of California at that particular time was pursuant to this employment of Crivello by Quartararo. There is no connection of the Steamer "Norburn" with any defendant in this case, nor is its nationality, ownership, cargo (other than that it was liquor) known. This service terminated in May, 1924. The next employment of Sam Crivello by Quartararo or Belanger, although the witness fixed it in August, 1924, was actually at a time *when the Steamers "Quadra" and "Malahat" were off the coast of California, and the Steamer "Quadra" did not arrive there until September 16, 1924.*

The record affirmatively shows that if petitioner Belanger ever met Sam Crivello or Quartararo it was not until after the "Quadra" was off the coast of California.

The record further affirmatively shows that the Steamer "Quadra" had already unloaded liquor to various other boats before the boat operated by Sam Crivello came alongside.

The "Quadra" had contact with the following boats:

> "731, viz: IV, California, Charles Truelson, Pilgrim, 903 B, C808, C55, Marconi, and Ocean Queen."

The Government has failed to show, except in the case of the California and Marconi, pursuant to what arrangement said boats formed contact with the "Quadra."

Thus, the record overwhelms that the presence of the "Quadra" off the coast of California was *first in point of time* and that any combination between Belanger, Quartararo and Crivello was *second in point of time.*

And although the inference might be drawn that knowledge of the presence of the "Quadra" produced combination between Belanger, Quartararo and Crivello it would violate every principle of law and reason to conclude that the presence of the "Quadra" was the result of any combination between Quartararo and Crivello or Belanger in the Northern District of California.

The conclusion is irresistible that the presence of the Steamer "Quadra" was solely pursuant to some combination existing in Vancouver, and, even though upon that combination we place the name "conspiracy," it is one that the District Courts of the United States have not the jurisdiction to try.

7. Evidence was admitted which did not relate to the conspiracy charged, the trial court acting upon a view of the law which was later declared erroneous in the case of Terry v. United States, 9 Fed. (2d), 28.

A. Liquor from the "Norburn."

THE FACTS

1. *Petitioners Tried and Convicted on "Quadra Conspiracy."*

The conspiracy as outlined by the prosecution starts with the "Quadra" leaving Vancouver in September, 1924, (R. 90) and no mention is made of the "Norburn" (R. 88-92.)

The indictment confines all the overt acts to the "Quadra." (R. 13-18.)

2. *The Trial Court in its instructions (R. 601-602) outlined the conspiracy charged, the "Quadra" conspiracy.*

> "The indictment in effect charges that a certain corporation (Consolidated Exporters Corporation R. 310) formed in a foreign country, to-wit the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provision of her manifest, for delivery to another foreign country, to-wit Mexico. * * * It is then charged that in effect Captain Ford, etc. * * * of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that the liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to California and to deliver that liquor by means of small boats, etc."

3. *Except the "Norburn," all the other boats had the same origin, cargo and destination.*

As the opinion of the Circuit Court of Appeals states the "Quadra," "Coal Harbor" and the "Malahat" all left the same port, Vancouver, the shipper of their cargoes was the same Consolidated Exporters Corporation Ltd. and their destination was La Libertad and Columbia (R. 848). These boats worked together transferring liquor from one to another (R. 172 and 177).

4. *The "Norburn" is mentioned by only one witness, is confined to himself and one other defendant, and is disconnected in every aspect.*

The defendant Sam Crivello pleaded guilty and testified for the prosecution that *late in April or early in May*

1924 (before the Treaty), he brought liquor from the "Norburn" to Quartararo (R. 217-221). Crivello is the only person to mention the "Norburn." This was months before the "Quadra" matter of September, and is confined solely to Crivello and Quartararo.

Unlike the other boats, neither the origin, cargo, nor destination of the "Norburn" is shown; there is no connection with the foreign corporation mentioned in the court's outline of the conspiracy (*supra*) nor is there any other connection.

5. *The trial court expressly admitted such evidence because of his rulings in the Terry case: "That other instances" are admissible, and that any conspiracy will do.*

During our trial the court said:

> "I held in his (Terry) very case that it was proper on a charge of conspiracy to land liquor to show other instances, etc." (R. 208.)
>
> "If there was *a* conspiracy between the defendant Quartararo and this defendant (Crivello) it would be sufficient to convict (R. 222). * * * The thing after all is the conspiracy, and the defendants having been apprised that the Government charged that they had entered into a conspiracy to violate certain statutes and any acts which were in violation of those statutes and which concerned any of the defendants and any other person, or more than one person, so that it would constitute under the law *a* conspiracy is admissible." (R. 224.)

6. *The Circuit Court of Appeals takes this erroneously admitted "Norburn" incident as "The Conspiracy."*

While the petitioners were tried for the conspiracy outlined by the prosecution and by the trial court (*supra*), the Circuit Court of Appeals on the contrary, takes the "Norburn" incident as *The Conspiracy.*

"On the entire case the conclusion is warranted that about the *first* of May, 1924 (before the treaty of May, 22), Quartararo and Sam Crivello within the Northern District of California conspired to import and possess liquor; that Belanger and his corporation (The Consolidated Exporters) at that time or shortly thereafter became parties." (R. 849.)

This certainly is not the conspiracy charged and outlined, on which the defendants were tried.

THE LAW

1. *The general law of conspiracy is in issue. A conspiracy is not an omnibus charge, nor can two conspiracies be joined in the same indictment.*

2. *After our trial, the identical erroneous thoughts of the trial judge were corrected in the Terry appeal.*

Terry v. U. S., C. C. A. Ninth 7 F. (2d) 28, holds:

"A conspiracy is not an *omnibus charge* under which you can prove anything and everything and convict of the sins of a life time."

"In ruling upon the admission of testimony and in the charge to the jury, *the court proceeded upon the theory* that some of the defendants might be convicted of one conspiracy and some of another * * * . The rulings admit of no other construction."

"There was no testimony of any kind, direct or circumstantial, tending to connect any of the other defendants (except two) with this *prior incident* or transaction."

As above shown in our case, the same trial judge here expressed the same thoughts; the right "to show other instances" (also hereafter the dollar bills) and that '*a* conspiracy between Quartararo and Crivello would be sufficient to convict, and that a violation "which concerned any of the

defendants and other person, so that it would constitute under the law A *conspiracy is admissible.*"

3. *The applicable decisions and weight of authority define the limit and scope of a conspiracy charge and do not permit "other instances" or more than one conspiracy.*

Terry v. U. S., C. C. A. Ninth, 7 F. (2d) 28, holds:

> "The charge is *limited* by the terms of the indictment itself. The indictment here charges but one combination or conspiracy. * * * The *scope* of the conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope but cannot extend it."

U. S. v. M'Connell, 285 Fed. 164, holds:

> "Such a combination would not constitute a single conspiracy but several conspiracies, which not only could not be joined in one count, but not even in one indictment."

McElroy v. U. S., 164 U. S. 76; *U. S. v. Richards*, 149 Fed. 443; *U. S. v. Cole*, 153 Fed. 801; *U. S. v. Ehrgott*, 182 Fed. 267.

4. *The Circuit Court of Appeals to establish venue was forced to affirm a conspiracy not charged nor tried.*

To comport with *Hyde v. U. S.*, 225 U. S. 347, and section 731 R. S. (presented *supra*) the Circuit Court of Appeals had to find a *beginning* in some Judicial District of the United States to establish venue.

Without the "Norburn" incident, which was inadmissible under applicable decisions and under the weight of authority, this could not be done in the manner outlined in the instant judgment. The applicable decisions and the weight of authority excluding the "Norburn" incident, ex-

clude likewise the basis of the venue attempted to be established by the Circuit Court of Appeals.

The Dissenting Opinion and the Dollar Bills.

THE FACTS

1. *The Promised Connection Detailed in Opening Statement.*

> "We will show you as part of that system that the individuals * * * used a system of $1 bills to secure their cargo. That these bills were clipped in half, one half being delivered to the captain or supercargo of the 'Quadra' and *the other half going out in the small motor boat* that went to secure the *particular load of cargo called for,* these dollar bills having upon their back the list and order for the specific amount and the *kind of liquor* that was to be secured from the 'Quadra'; when they got out there the bills were matched up, and when matched up, the cargo was delivered to the motor boat (R. 91-92)."

2. *As the dissenting opinion states "there was an entire failure of proof"* (R. 860).

3. *The prosecution produced as witnesses, on this very subject, operators of the motor boats: they show, not these bills, but other means used to secure liquor.*

For the prosecution: Motor boat operators, Magruder, (R. 203-213) Clance, (R. 213-216) Sam Crivello, (R. 216-235) Marino Crivello, (R. 252-263) did not mention a dollar bill, but said on this very subject, other means, *e. g.* "letters" (R. 253) "documents" (R. 256) were used.

For the defense: Harris, (R. 330-401) Evelyn, (R. 401-420) Gisbourne, (R. 421-435) and Sargent, (R. 436-444) testifying on deliveries, did not mention a dollar bill.

4. *Only testimony was that of an expert who opined some of the writing on the bills to be in hand of Quartararo.*

(Heinrich, R. 265 to 307.)

5. *Then trial court promises: to properly instruct jury if no connecting evidence produced.*

> "The Court: I will when I get to it. It may be abundantly established even to the satisfaction of you gentlemen, that it (these dollar bills) does concern the immediate conspiracy charged. It may not; if not, I will properly instruct the jury (R. 274)."

Though there is not an iota of further evidence, the promise was not kept.

6. *Proper requested instruction refused.*

In accord with the promise of the trial court, a proper instruction to take these bills from the consideration of the jury was requested but was refused (R. 627).

7. *Question of connection not submitted: only question of handwriting, on which there was no conflict, was submitted to the jury.*

Jury was instructed as follows: and not otherwise on this subject):

> "Nothing has been presented by either side which was not fairly bearing upon the rather involved questions presented. * * *" (R. 592.)
>
> "The Government has presented and the court has allowed in evidence here, certain one dollar bills" (R. 608).
>
> (Continuing) "There is evidence here of an expert (Heinrich) on the subject of handwriting who testifies

that some of the writing at least on the back of those bills is in the handwriting of the defendant Quartararo. You must weigh the evidence of an expert, etc. * * *. Therefore, in determining whether or not you believe that Mr. Quartararo wrote etc., you will weigh the testimony of Mr. Heinrich, etc." (R. 608.)

8. *Trial court guided by his former rulings in Terry case (later reversed.)*

It is apparent from his remarks that the mind of the trial judge was guided by his rulings in the Terry case, *e. g.:*

"I held in the very case of this man Terry * * * that it was competent on a charge of conspiracy to land liquor to show other instances, etc. (R. 208.)"

THE LAW

1. *The Terry case reversed on this same matter (reversal after our trial.)*

Terry v. U. S., C. C. A. Ninth, 7 F. (2d) 28, holds:

"A conspiracy is not an omnibus charge, under which you can *prove anything and everything and convict of the sins of a life time.*"

2. *Majority judgment here is against all applicable decisions on the same matter.*

In *Boyd v. U. S.*, 142 U. S. 450, Justice Harlan said:

"However depraved in character and however full in crime their past lives may have been, the defendants were entitled to be tried upon competent evidence and *only for the offense charged.*"

R. R. v. Houston, 24 L. ed. p. 542 at 544, holds:

"Juries are sufficiently prone to indulge in conjectures, without having possible facts not in evidence suggested for their consideration."

Thompson v. U. S., C. C. A. First, 144 Fed 16, holds:

"Such rule is often called 'The Rule of Logic,' etc."

Hall v. U. S., C. C. A. Fourth, 256 Fed. 750, holds, quoting:

"This rule (Rule of Logic) so universally recognized and so firmly established in all English speaking lands, is rooted in that jealous regard for the liberty of the individual which has distinguished our jurisprudence from all others, at least from the birth of Magna Charta."

Crowley v. U. S., 8 Fed. Rep. 2d, 119, holds:

"It (the evidence in question) does not appear to have had *any relation* to the charge of conspiracy * * * or that it was *in any way connected* with the offense under consideration * * * THERE MUST BE SUCH A SHOWING OF CONNECTION."

Ford v. U. S., C. C. A. 259 Fed. 522, holds:

"There was no attempt to connect the two (the evidence admitted and the charge made).

Sparks v. Oklahoma, C. C. A. 8th, 146 Fed. 373; *Carpenter v. U. S.*, C. C. A. 4th, 280 Fed. 600; *Fish v. U. S.*, C. C. A. 1st, 215 Fed. 549.

3. *Intent is not here involved: Hence unconnected matter though of same character is not admissible.*

Dewitt v. U. S., 291 Fed. 1001; *Marshall v. U. S.*, C. C. A. 2d, 197 Fed. 513; *Thompson v. U. S.*, C. C. A. 3d, 283 Fed. 896.

4. *The issue is: Not a connection between the bills and Quartararo, but between the bills and the particular transgression charged.*

The Belanger Telegram.

The government, over the objection of defendants, that it was not authenticated and was incompetent, irrelevant and immaterial, introduced against petitioner Belanger the following telegram:

> "George Norgan,
> Room 1052 Biltmore Hotel,
> Los Angeles, Calif.
> "Merchandise not yet reached market. Therefore cannot report anything different. Stop. Have appointment with Vince tomorrow who will make proposition in morning. Things shaping good. Regards. C. H."

The only evidence offered concerning authentication is as follows: The telegram was typewritten; the name C. H. Belanger was written on a corner of the telegram by an employee of the telegraph company together with the address "Somerton Hotel;" at the date of the wire Belanger was registered at the Somerton Hotel.

The above authentication was insufficient. *U. S. vs. Sprinkle,* 150 Fed. 56.

Further, the telegram was introduced in evidence under the same theory of law which permitted the introduction of the Norburn evidence and the dollar bills and as to which the same trial judge was subsequently reversed in *Terry v. U. S., supra.*

The telegram neither related to the Norburn incident which was closed in May, nor to the Quadra case, which came to the fore in September, nor any negotiations concerning either claimed to be pending at the time.

The introduction of said telegram was contrary to the rule laid down in

Terry v. U. S., 7F. (2d) 28 (Ninth Circuit.)
Crowley v. U. S., 8 F. (2d), 119 definitely following the Terry case, *supra*, and holding that evidence to be admissible there must be a showing of connection.
Boyd v. U. S., 142 U. S. 450.
Ford v. U. S., 259 Fed. 522.

The cases cited under "The Norburn Incident" all are in accord with the views here expressed.

The introduction of this evidence and kindred evidence elsewhere discussed, and the sustaining thereof by the Circuit Court presents an important question of Federal law in which the opinion we seek to review is in conflict with the weight of Federal authority.

CONCLUSION.

The errors of the District Court and the Circuit Court of Appeals set forth in the petition are all serious and of importance when it is considered that the prison sentences for the petitioners have resulted therefrom. But there is a broader ground for the granting of the petition. Certain of the erroneous rulings are upon highly important questions of law which are of general application and should be of concern to the Government of the United States.

1. The indictment charged the defendants with the distinct offense of conspiracy under Section 37 of the criminal code, the alleged conspiracy being one to violate the "National Prohibition Act" and the "Tariff Act of 1922." It alleged the effect of the treaty of May 22, 1924, between Great Britain and the United States as material to the offense charged, but it did not allege that the seized British ship "Quadra" of which the de-

fendants Ford, Harris and Evelyn were officers, was ever within the territorial waters of the United States, and it did not allege that Ford, Harris or Evelyn, British subjects, were ever within United States territory. As to these defendants it was grave error not to sustain the demurrer to the indictment.

2. The treaty provides for a *seizure* of the vessel within a prescribed area *outside* the territorial waters of the United States *only* for the purpose of taking it into a port of the United States for *its* adjudication in accordance with law. The record does not disclose any proceedings against the *vessel*, and under the indictment for conspiracy it was grievously erroneous to admit under the circumstances of the seizure of the vessel evidence taken from it by virtue of such seizure.

3. Both the District Court and the Circuit Court of Appeals held that the admissibility of the seized evidence from the ship "Quadra" depended upon the location of that vessel, and assuming the right of search and seizure under the Treaty, for the purpose of securing evidence against the defendants, it was a violation of the treaty and error by both courts to determine the location of the vessel at the time of the seizure, and thus determine the jurisdictional question, by a speed test in the quiet waters of San Francisco Bay at a date four months after the seizure.

4. The crime charged in the indictment is conspiracy, and if the alleged conspiracy was begun outside of any district of the United States there was no venue of the offense in the Northern District of California as to British subjects who were never within the territory of the United States. Moreover, if there was an alleged conspiracy formed within that judicial district there could be no subsequent adhering to it by British subjects who were never in the territory of the United States. In either event it was error to refuse the

motion for a directed verdict of not guilty in the cases of Ford, Harris and Evelyn.

Respectfully submitted,

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OCT 5 19
WM. R. STANS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

BRIEF FOR THE PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 312.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent,*

Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

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BRIEF FOR THE PETITIONERS

STATEMENT OF THE CASE

This case is here on writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review the judgment of that court which affirmed a judgment of the Southern Division of the District Court of the United States for the Northern

District of California, convicting the petitioners, defendants below, of conspiracy.

The opinion of the Circuit Court of Appeals in the case will be found in the Record at page 840, and it is reported in 10 Federal Reporter, 2d series, page 339.

The petitioners will hereinafter in this brief be referred to as the defendants.

The defendants, Ford, Harris, Evelyn, Quartararo and Belanger, were indicted, with fifty-five others, in the Southern Division of the District Court of the United States for the Northern District of California for the crime of conspiracy to violate the "National Prohibition Act" and the treaty between the United States and Great Britain of May 22, 1924, and to violate the "Tariff Act of 1922" and the treaty between the United States and Great Britain of May 22, 1924, by means of the alleged transportation and importation into the United States of intoxicating liquors. (R. 5-19.)

The conspiracy was alleged to have been formed by the defendants and certain other persons in the district and division in which the indictment was found, and in the indictment it was alleged that the conspiracy was in operation between January 1, 1924, and the date of the indictment on November 20, 1924. And four overt acts in furtherance of the conspiracy were alleged in substance as follows:

> (a) That the steamship *Quadra* was loaded at Vancouver, B. C., in September, 1924, with 12,000 cases of liquor which were carried to a point near the Farallone Islands, where a portion of the cargo was transferred to motor boats named which carried the liquor into the United States.

(b) That on the 29th of September the *Quadra* delivered a barrel containing one hundred gallons of whiskey to the motor boat *903 B* which transported the whiskey to San Francisco.

(c) That on the 11th of October the *Quadra* delivered to the same motor boat a named quantity of alcohol, gin, brandy, whiskey and vermouth which was transported to San Francisco.

(d) That on the 12th day of October the *Quadra* delivered to the defendants Pensotti and McKenzie on the motor boat *C-55* eighty-nine sacks of whiskey and one case of beer which the said defendants attempted to transport into San Francisco Bay. It is charged that this delivery was made near the Farallone Islands and at a less distance therefrom than could be traversed by the *Quadra* and the *C-55* in an hour. (R. 13-17.)

Ford, Harris and Evelyn were the master and first and second officers, respectively, of the steamship *Quadra*.

The *Quadra* was a ship of British registry and these men were and are now British nationals. The *Quadra* was seized according to the Government nearly six miles away from the coast of the United States and it is not contended that either the ship or Ford, Harris or Evelyn were ever within the territorial waters of the United States.

Quartararo and Belanger are alleged to have been parties to the alleged conspiracy charged in the indictment while they were domiciled in or sojourning in San Francisco, the evidence offered by the Government being for the purpose of showing that they participated therein by arranging for the delivery of liquor from the *Quadra* and other ships on the

high seas to Oakland Creek and other points in San Francisco Bay.

At the trial important questions arose relating to the so-called rum treaty between the United States and Great Britain, to the defect in the indictment upon which the defendants were tried, to the scope of the jurisdiction of courts of the United States under Section 37, of the Criminal Code, and to the admission of irrelevant and incompetent evidence offered by the Government.

These questions will be treated in sequence in the argument herein and the appropriate assignments of error and record references will be there set out.

SPECIFICATION OF ERRORS

The errors relied upon in praying for a reversal of the judgment against these defendants may be concisely stated as follows:

(1) The District Court erred in attempting to exercise jurisdiction over the persons of the defendants, Ford, Harris and Evelyn, (British subjects brought into this country as an incident of the seizure of a British vessel beyond the territorial waters of the United States in accordance with the treaty with Great Britain of May 22, 1924) in violation of the said defendants' right secured to them by virtue of said treaty. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(2) The District Court erred in permitting any of these five defendants to be convicted upon the indictment in the present case which properly

construed did not charge an offense against the United States. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(3) The District Court erred in not directing a verdict in favor of the defendants, Ford, Harris and Evelyn, when the evidence adduced by the Government showed beyond question that they had at no time been nor had any of their conduct taken effect at any place within the scope of Section 37 of the Criminal Code, and that they, therefore, had not violated that statute. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(4) The District Court erred in admitting in evidence cargo and papers from the British vessel *Quadra* obtained by a seizure by the United States in the absence of any proof that the said vessel had been lawfully seized in accordance with the treaty of May 22, 1924. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(5) The District Court erred in admitting in evidence testimony regarding the transportation of liquor from the *S. S. Norburn,* which transactions were not shown to have been connected in any way with the conspiracy developed by the Government's proof. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(6) The District Court erred as to the defendant Quartararo in permitting to go to the jury certain one dollar bills with endorsements thereon alleged to be in the handwriting of said Quar-

tararo, which dollar bills were not shown by any proof whatever to have been connected in any way with the alleged conspiracy. This error was aggravated by the charge of the trial judge relating to these dollar bills. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

(7) The District Court erred as to the defendants Belanger and Quartararo in reopening the case and permitting the introduction into evidence of a telegram alleged to have been sent by said Belanger without any authentication of the said telegram or proof of its connection with the alleged conspiracy. The Circuit Court of Appeals erred in not sustaining the assignments of error on this point.

SUMMARY OF ARGUMENT

PART I

The Lower Court had no jurisdiction over the persons of the defendants, Ford, Harris and Evelyn, to try them for the conspiracy charged against them. These men were not unqualifiedly subject to the jurisdiction of the United States and their courts. They are British subjects and had been brought forcibly, and over their protests, by government agents, into the United States incident to the seizure on the high seas of the British vessel of which they were the officers. The seizure of their vessel was made under claim of authority conferred upon the United States by the treaty with Great Britain of May 22, 1924, 43 Stat. 1761. That treaty was made to set at rest a controversy which had arisen between the two nations regarding the rights of British subjects on the high seas beyond the territorial waters of the United States.

It was intended to deal with the subject in a complete way and to set the extreme limit of the authority of the United States, both as to what the United States might physically seize beyond its territorial waters and as to the sole purpose for which the seizure might be made—in other words, the extent of the legal jurisdiction obtained by the seizure. The treaty provided for the seizure of vessels only and then only for the purpose of adjudicating them in accordance with the laws prohibiting the importation of alcoholic beverages. Both the plain language of the treaty and every consideration affecting its construction including the precedents of international law show that by the treaty Great Britain granted no right to exercise criminal jurisdiction over her subjects on the high seas for violation of the Criminal Code of the United States and that the United States gave up any such claim of authority. Therefore, under the doctrine laid down in *United States v. Rauscher*, 119 U. S. 407, the defendants, Ford, Harris and Evelyn, having been brought within the jurisdiction of the United States by virtue of the limited authority conferred by the treaty, must be allowed to depart without interference for any other purpose than that specifically provided in the treaty, the adjudication of the vessel.

PART II

The indictment in the present case in one count charges a conspiracy to do acts alleged to be unlawful —not simply by virtue of the two statutes of the United States, but by virtue of those specified statutes and in each case by the treaty with Great Britain. From the language of the indictment it is clear that the grand jury believed that a conspiracy to import

liquor within one hour's steaming distance of the coast of the United States was a conspiracy to violate the treaty with Great Britain, and strictly construed in favor of the defendants the indictment does not charge more than that. Such a charge does not state a crime since the treaty does not create any offense against the United States nor extend the scope of any laws of the United States. The indictment is, therefore, demurrable. The action of the Circuit Court of Appeals in sustaining the indictment by disregarding the allegations regarding the treaty was error within the principle of *Ex parte Bain*, 121 U. S. 1, and amounted to an amendment of the indictment.

PART III

The defendants, Ford, Harris and Evelyn, were not shown to have been, at any time prior to being brought into the United States, within the scope of Section 37 of the Criminal Code. Under recognized principles of construction laid down by this Court in *American Banana Company v. United Fruit Company*, 213 U. S. 347, the universal language of Section 37 will not be construed as applying to anyone beyond the jurisdiction of the United States. The defendants, Ford, Harris and Evelyn, being British subjects on a British vessel on the high seas, were never within the jurisdiction of the United States. They were not tried or convicted for any act which took effect in the United States but merely because of a relationship with persons in the United States who there committed alleged criminal acts. There is no rule of law which makes this relationship, not criminal where they were, a violation of any law of the United States.

PART IV

The action of the trial court in overruling defendants' motion to suppress evidence seized on the *Quadra* was, upon the record made, erroneous and improper. Upon defendants' prima facie showing that the seizure had been made beyond the treaty limits, the motion should have been granted unless the Government showed facts which, if true, would enable the court to determine that the seizure was in accord with the treaty. To overrule the motion upon the Government's allegation of the mere conclusion of law that the seizure was within the prescribed limits was in effect to relieve the United States of their treaty obligations. Subsequently when it was developed from the Government's testimony that there was no evidence that the motor boat attendant on the *Quadra* could have under the conditions prevailing at the time of the seizure traversed the distance from the *Quadra* to territory of the United States in one hour, the evidence should have been excluded as not having come rightfully into the possession of the United States but being the property of the British owners in the custody of the Captain and officers of the *Quadra*.

PART V

The trial court erred in permitting evidence to be introduced and to go to the jury relating to the importation of liquor from the vessel *Norburn*. The alleged importation of liquor from this vessel was not shown by proof, direct or circumstantial, to be connected in any way with the alleged conspiracy, and the importation which the evidence referred to was at a time considerably prior to the alleged conspiracy. This evi-

dence was prejudicial to all the defendants. The Circuit Court of Appeals sustained the lower court in the admission of this evidence under a clear misapprehension of fact as shown by its opinion.

PART VI

The trial court erred in permitting evidence to be introduced and to go to the jury concerning one dollar bills with endorsements thereon alleged to have been in the handwriting of the defendant Quartararo and to have been used as a means of ordering liquor. There was an entire failure of any evidence to show the use of these dollar bills in connection with the alleged conspiracy. This evidence was prejudicial to the defendant Quartararo. The charge of the trial judge greatly aggravated the prejudicial effect of this evidence.

PART VII

The trial court erred in permitting evidence to be introduced and to go to the jury as to a wholly ambiguous telegram supposed to have been sent by the defendant Belanger to one Norgan. The importance of this evidence was magnified in that the trial court reopened the case to receive it in evidence after both sides had rested. The sender of this telegram was not properly identified; it was not shown to have been connected with the alleged conspiracy in any way, and its prejudical effect as to the defendants Belanger and Quartararo under the circumstances of its introduction in evidence was incalculable.

ARGUMENT

PART I

THE DISTRICT COURT HAD NO JURISDICTION TO TRY DEFENDANTS FORD, HARRIS AND EVELYN FOR THE CRIME OF CONSPIRACY.

THE FACTS

Ford, Harris and Evelyn were the master and first and second officers, respectively, of the steamship *Quadra*. (R. 89, 330, 401-403, 602-604.) They were in 1924 and are now British subjects. (Rec. 330, 401-403, 603.) The *Quadra* was of British registry. (Rec. 179.) On October 12, 1924, the *Quadra* was seized at a point alleged by the United States to have been 5.7 miles from the North Farallone Islands by the Revenue Cutter *Shawnee* under suspicion of attempting to violate or having violated the laws prohibiting the importation of alcoholic beverages. (Rec. 106, 93, 144.) The *Quadra* and those on board, including, Ford, Harris and Evelyn, were towed against their protests and under threat of force if they should resist, into the port of San Francisco. (Rec. 99, 100, 101, 104-105.) There was no contention by the Government, and there is no evidence, that the *Quadra* or her own boats, or Ford, Harris or Evelyn ever came within three miles of the coast of the United States at any time before the seizure by the United States Revenue Cutter *Shawnee*.

The *Quadra* and the defendants being brought to San Francisco, no proceedings were brought to adjudicate the vessel. But in November, 1924, the defendants, Ford, Harris and Evelyn, were indicted in the United States District Court for the Northern

District of California for the crime of conspiracy to violate the treaty with Great Britain of May 22, 1924, and certain laws of the United States. (Rec. p. 5 et seq.) The indictment set out in full Article II of the treaty with Great Britain of May 22, 1924, (Rec. 7-8.) The defendants, Ford, Harris and Evelyn, were convicted (Rec. 59) and sentenced (Rec. 73-81 et seq.). The sentences were affirmed by the Circuit Court of Appeals. (Rec. 868.)

The defendants Ford, Harris and Evelyn seasonably and vigorously objected that the District Court had no jurisdiction over their persons by virtue of the treaty of May 22, 1924. (Rec. 319, 320-322.) The refusal of the District Court to sustain this objection was reserved and assigned as error. (Assignment of Error, No. 95, Rec. 741-742.) The Circuit Court of Appeals ruled adversely to the defendants upon this assignment of error. (Rec. 846.)

ARGUMENT

It is respectfully submitted that by virtue of the treaty of May 22, 1924, the District Court was without jurisdiction over the persons of the defendants, Ford, Harris and Evelyn, British subjects, who had been brought within the territorial limits of the United States by reason of a seizure on the high seas of their vessel, registered under the British flag, by officers of the United States acting under color of authority conferred by the treaty with Great Britain.

1. The History of the Legal and Diplomatic Situation Which Led to the Treaty of May 22, 1924, Shows That Friction Had Developed Between the United States and Great Britain Because of the Seizure of British Vessels by the United States Beyond the Territorial Waters of This Country, a Practice Never Before Attempted by this Country in Time of Peace.

(a) The Seizure of Hovering Vessels Beyond Territorial Waters Rests Upon the Acquiescence of the Soverign Whose Flag Is Thus Violated, and Is Not a Matter of Right.

Both Great Britain and the United States have strictly maintained that three miles from the coast marks the limit of territorial waters.

> "We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast." Mr. Fish, Secretary of State to Sir Edward Thornton, British Minister, January 22, 1875, Foreign Relations 1875, 1, 649-650; 1 Moore's Digest of International Law, 731.
>
> See also Mr. Buchanan, Secretary of State, to Mr. Crampton, British Minister, August 19, 1848, M. S. Notes to Great Britain, VII, 185, 1 Moore 730. Mr. Evarts, Secretary of State, to Mr. Fairchild, Minister to Spain, No. III, March 3, 1881, Foreign Relations 1881, 1051; 1 Moore 732. See also *Cunard S. S. Co. v. Mellon,* 262 U. S. 100, 122.

Beyond that limit lie the high seas over which no nation can exercise jurisdiction. A ship upon the high

seas is, within contemplation of the law, subject solely to the jurisdiction of the nation whose flag she flies. No other nation, apart from treaty, may lawfully interfere with her.

> "Merchant vessels on the high seas being constructively considered for most purposes a part of the territory of the nation to which they belong, they are not subject to the criminal laws and processes of another nation; and any attempt of the officers or citizens of the latter to execute and serve such laws and processes on board of them can only be regarded as an illegal proceeding which their masters and crews are justified not only in disregarding but also in resisting." Mr. Blaine, Secretary of State, to Mr. Ryan, Minister to Mexico, November 27, 1889, relating to an alleged attempt made by Mexican officials to serve process on the master of an American vessel when 9 miles from land for an offense alleged to have been committed on a previous voyage. Foreign Relations, 1889, 614, 1 Moore, 931.

All nations have made sorties beyond the three-mile limit to repress vessels hovering along their coasts in the attempt to violate the territorial law. These extraterritorial acts are, however, founded upon acquiescence rather than upon any right to exercise jurisdiction beyond the three-mile limit.

> "It is questionable whether seizures of hovering vessels have graduated from the class of tolerated actions in excess of international rights to that of proceedings sanctioned by international law. It seems that the acquiescence has not been so general as to support the latter view." 36 Harvard Law Review, 609, 614.

In the case of *The Cagliari,* Dr. Twiss stated the situation clearly in an opinion given to the Sardinian Government. He said:

> "In ordinary cases, indeed, where a merchant ship has been seized on the high seas, the sovereign whose flag has been violated waives his privilege, considering the offending ship to have acted with *mala fides* toward the other state with which he is in amity, and to have consequently forfeited any just claim to his protection." 1 Moore's Digest of International Law 729-730.

Our own State Department has clearly stated that in exercising the authority to board vessels within four leagues of our coast conferred by the Act of March 2, 1799, Ch. 22, 1 Stat. 627, this Government claimed no jurisdiction beyond the three-mile limit *in invitum* but by the implied consent of vessels voluntarily coming to an American port since "no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States." Mr. Fish, Secretary of State, to Sir Edward Thornton, British Minister, January 22, 1875, Foreign Relations, 1875, I, 649-650, 1 Moore, 731; Mr. Evarts, Secretary of State, to Mr. Foster, April 19, 1879, MS. Inst. Mex. XIX 579, 1 Moore, 731.

And Sir Charles Russell in the Fur Seal Arbitration proceedings (1893) stated that:

> "In no such case by international law could it (a 'hovering act') be maintained as of right against an objecting nation." 13 Fur Seal Arbitration, 1076.

In a group of early cases in this court the subject of seizure beyond the three-mile limit was discussed. *Church v. Hubbart,* 2 Cranch 187; *Rose v. Himely,* 4 Cranch, 241; *Hudson v. Guestier,* 6 Cranch 281. These cases are most obscure—See Marshall, C. J., in *Hudson v. Guestier,* supra, at 285—and it is probable that the court did not pass upon the validity of the seizures under international law. See Wheaton, International Law, 8 Ed., Sec. 179, Note 108; 1 Moore 727-730. One thing alone appears clearly,—the exercise of authority beyond the three-mile limit depends upon its acceptance by other nations, in each instance, as reasonable under the conditions. In *Church v. Hubbart,* supra, at page 235, Marshall, C. J., said:

> "In different seas, and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to. Thus, in the channel, where a very great part of the commerce to and from all the north of Europe, passes through a very narrow sea, the seizure of vessels on suspicion of attempting an illicit trade, must necessarily be restricted to very narrow limits; but on the coast of South America, seldom frequented by vessels, but for the purpose of illicit trade, the vigilance of the government may be extended somewhat farther; and foreign nations submit to such regulations as are reasonable in themselves, and are really necessary to secure that monopoly of colonial commerce, which is claimed by all nations holding distant possessions.
>
> "If this right be extended too far, the exercise of it will be resisted. It has occasioned long and frequent contests, which have sometimes ended in open war. The English, it will be well recollected, complained of the right claimed by Spain to search their vessels on the high seas, which was

carried so far, that the *guarda costa* of that nation seized vessels not in the neighborhood of their coasts. This practice was the subject of long and fruitless negotiations, and at length, of open war. The right of the Spaniards was supposed to be exercised unreasonably and vexatiously, but it never was contended, that it could only be exercised within the range of the cannon from their batteries."

There has been nothing more provocative of international friction than searches and seizures by one nation of the vessels of another nation on the high seas. It is only necessary to recall the difficulties which arose during the Napoleonic wars, the *Trent* affair, and the problems of 1914 to 1917 to understand the suspicion with which the exercise of such authority has been and is regarded.

(b) The Cases from 1799 to 1922 Show No Instance of a Seizure of a Foreign Vessel, Hovering Along Our Coast Which Had Never Come Directly or by Means of Its Own Boats Within the Three Mile Limit.

The American "Hovering Act" was contained in the Act of March 2, 1799, Ch. 22, 1 Stat. 627. Section 27 of that act, 1 Stat. 646, provided that if after the arrival of any vessel, laden with goods and bound to the United States from a foreign port, within four leagues of the coast any part of the cargo should be unladen before the ship came to the proper place for discharge the master was liable to a penalty *and the goods so unladen should be forfeited.*

Section 28 provided that any vessel into which goods

might be unladen in violation of Section 27 should be forfeited.

Section 50 of the same Act provided for the forfeiture of a vessel unloading at night goods exceeding $400 in value without a permit from the customs authorities.

Sections 27 and 28 of the Act of March 2, 1799, became Sections 2867 and 2868, respectively, of the Revised Statutes. Section 50 of the said Act became Sections 2872, 2873, 2874 of the Revised Statutes. All these sections remained in force until repealed by Sections 642 and 643 of the Tariff Act of 1922, 42 Stat. 858, 989.

The reported cases arising under Sections 27 and 28, supra, (Rev. Stat. Sec. 2867 and 2868) are very few. In *The Betsey,* (1818) Fed. Case 1365, a Spanish vessel unloaded cargo into *The Betsey* within four leagues of the coast of the United States. *The Betsey* was forfeited. It does not appear whether the unlading was within or without the three mile limit. It also does not appear that *The Betsey* was a foreign vessel. From the facts of the case,—and of *The Abby,* Fed. Case 14, arising out of the same transaction—it would seem that *The Betsey* and *The Abby* were small coasting vessels, probably American.

In *The Coquitlam,* (1893), 57 Fed. 706, certain sealing vessels unloaded cargo into the British vessel *Coquitlam* within four leagues of the coast of the United States and beyond the three mile limit. The District Court forfeited the vessel under Rev. Stat. 2868. The Circuit Court of Appeals, (77 Fed. 744) reversed the decree on the ground that the sealing vessels were not bound for the United States and that the unlading was not unlawful under Section 2867 of the

Revised Statutes. The American and British Claims Arbitration Tribunal awarded damages against the United States for the seizure of *The Coquitlam* in the amount of $48,000. See Report of Fred K. Neilson, Agent, June 25, 1926, pp. 444-451. See also *The Javirena*, 67 Fed. 152 (1895).

In *The Virgin*, Fed. Case 16,625 (1806), and *Cargo Ex Lady Essex*, 39 Fed. 765 (1889) the libels were dismissed. See also *U. S. v. Curtis*, 16 Fed. 184 (1883).

Sections 2872, 2873, 2874 of the Revised Statutes, (Section 50 of the Act of March 2, 1799), have been before the courts more often. An early line of cases held that this section was not applicable unless the unlading occurred in a port of the United States.

The Hunter, Fed. Cas. 15,428 (1806)
U. S. v. Brant, Fed. Cas. 14,637 (1806)
The Active, Fed. Cas. 33 (1866)

In the remaining cases the unlading was in a port of the United States and therefore within the three mile limit. In certain of the cases there are *dicta* to the effect that Section 50 of the Act of March 2, 1799, *supra*, is applicable within four leagues of the coast. In no case, however, is such a situation involved.

The Industry, Fed. Cas. 7,028 (1812)
The Harmony, Fed. Cas. 6,081 (1812)
The Sarah Berenice, Fed. Case. 12,343 (1867)
Clark v. Insurance Co., Fed. Cas. 2832 (1840)
Jackson v. United States, Fed. Cas. 7149 (1826)
The Gertrude, Fed. Cas. 5370 (1841)
Peisch v. Ware, 4 Cranch. 347 (1808)
United States v. Twenty Cases of Matches, Fed. Cas. 16559 (1868)
Locke v. U. S., 7 Cranch. 339 (1813)

United States v. 218½ Carats Loose Emeralds, 153 Fed. 643 (1907)

In *The Abby*, Fed. Cas. 14, (1818) the libel was brought under Section 50, *supra*, and also for violation of the law prohibiting an American vessel from engaging in a trade other than that for which it was licensed. The Court rested its decision wholly upon the second point.

Another series of cases involving the right of seizure beyond the three mile limit grew out of the seizures in Bering Sea in the years 1886, 1887, and 1889 of British vessels engaged in seal hunting in alleged violation of Sec. 1956 of the Revised Statutes. These seizures were made between fifteen and one hundred and fifteen miles off the coast of Alaska. See 1 Moore, 919. In *In Re Cooper*, 143 U. S. 472, a petition for a writ of prohibition to prevent the forfeiture of the British ship *W. P. Sayward* alleged to have been seized fifty-nine miles from shore of Alaska came before this court. This court refused to pass upon the legality of the seizure and denied the writ upon the ground that even if the territorial waters only extended three miles from the coast, the seizure might have been within such limits so far as the record showed since it was merely stated to have been "within the limits of Alaska Territory, and in the said waters thereof." This finding of fact was thought to be binding on the Court. See also *The Kodiak*, 53 Fed. 126.

Subsequently the controversy between the United States and Great Britain arising out of these seizures was referred to an Arbitral Tribunal on which sat Mr. Justice Harlan. The Tribunal decided that the

United States did not have the right to make seizures beyond the three mile limit. See 1 Moore, 910, 913. Damages were awarded against the United States on account of these seizures including the seizure of the schooner *W. P. Sayward.* 1 Moore, 922; 2 Moore, International Arbitrations, 2123.

It seems to have been generally conceded in the controversies over the fur seal seizures that if a vessel sent its own boats within the three mile limit even though the vessel itself remained outside, the vessel nevertheless might be, in contemplation of law, regarded as within the territorial waters and violating the territorial law.

> *The Case of the Araunah* (1892), 1 Moore, 908.
> *United States v. Jane Gray* (1896), 77 Fed. 908.
> *The Tenyu Maru* (1910), 4 Alaska 129.

Thus up to the time of the decision of the cases next to be considered, arising in connection with the enforcement of the national prohibition of intoxicating liquors, there is no case of the seizure and forfeiture of a foreign vessel in time of peace which had never itself or through its boats come within the territorial waters of the United States, except in the fur seal controversy and for these seizures the United States paid compensation.

c. In 1922 the United States Began to Make Seizures Beyond the Three Mile Limit Which Action Evoked Protests From Great Britain.

In 1919 the National Prohibition Act, 41 Stat. 305, was passed. This Act is effective only three miles from the coast of the United States. *Cunard Steamship Company v. Mellon,* 262 U. S. 100, 122.

On September 21, 1922, the "Tariff Act of 1922" was passed, 42 Stat. 858. This Act, in Section 586, specifically imposed the penalty of forfeiture upon any vessel, unlading without permission from the customs authorities, within four leagues, or twelve miles of the coast of the United States.

Meanwhile the U. S. District Court in Massachusetts decided *The Grace and Ruby,* 283 Fed. 475. (September, 1922.) This case applied the reasoning of the *Tenyu Maru, supra,* and the sealing cases. It held that *The Grace and Ruby,* a British ship, by unlading its cargo beyond the three mile limit into a motor boat which went to shore accompanied by the *Grace and Ruby's* boats and crew, was guilty of an unlawful unlading at night within the territorial limits of the United States which warranted the forfeiture of the vessel under Rev. Stat. Sec. 2872, 2874. This principle was not new.

The Henry L. Marshall, 286 Fed. 260 (Oct., 1922), affirmed 292 Fed. 486, marked an extension of the principle of *The Grace and Ruby, supra.* The *Henry L. Marshall,* an alleged British vessel, was seized in the summer of 1921 nine or ten miles from the coast of the United States. She had unloaded liquor into motor boats, *not her own,* which had taken it within the three mile limit. *No boat belonging to the Marshall and no member of her crew came within the three mile limit.* The vessel was forfeited.

The British government protested against this seizure. The protest was finally withdrawn upon the ground that the vessel was not of *bona fide* British registry; but in withdrawing the protest the British government did not acquiesce in the principle of the ruling. See Statement of Hon. Charles E. Hughes, Jan. 23, 1924, *infra.*

After the seizure of the *Marshall*, the government seized a considerable number of British vessels under the same circumstances; that is, vessels which had never directly or by their small boats or crew come within the three mile limit. See *infra*, page 24. The British government vigorously protested these seizures. On June 26, 1922, Mr. Hughes, Secretary of State, proposed to Great Britain that a treaty be entered into giving to the authorities of each nation the right to search vessels of the other within twelve miles from shore. This offer was declined by Great Britain on Oct. 13, 1922. See *New York Times*, Oct. 17, 1922. The *London Times*, July 30, 1922, characterized Mr. Hughes' proposal as a "tall order" calling for "fussy interference." See *London Times*, July 30, 1922.

On October 28, 1922, the Treasury Department ordered the release of the British vessel *Emerald* seized more than three miles from shore. On November 10, 1922, the Treasury Department upon request of the Department of State and the Department of Justice published an order directing the release of all foreign vessels seized outside the three mile limit where there was no evidence of communication with the shore by means of the vessel's own boats. The text of the order is as follows:

"November 9, 1922.

The Collector of Customs,
New York, N. Y.
Sir:

The Department is in receipt of your telegram of the 8th instant, relative to the seizure of the British auxiliary Schooner M. M. GARDNER, on September 13, 1922.

It appears from your report that the seizure was made outside the three-mile limit, and that while the master admitted unlading part of the cargo beyond the three-mile limit there is no evidence that the vessel was communicating with the shore by means of her own boats or equipment.

Under these circumstances it is the desire of the Department of State and the Department of Justice that all foreign vessels so seized shall be released, and you will be governed accordingly. A report shoud be made to the Department in each instance.

Respectfully,

s/d A. W. MELLON,
Secretary.

No enclosure.

About twenty vessels were released in accordance with this order, reloaded with their cargoes, and conveyed to the point of seizure. See *New York Times*, Nov. 11, 1922.

The practice of the Treasury Department, so far as can be learned, continued in accordance with the above order until the ratification of the Treaty with Great Britain on May 22, 1924.

Thus for more than one hundred years—from 1799 to 1921—the Government in enforcing the revenue acts had not seized foreign vessels beyond the three mile limit when these vessels had not come within the three mile limit directly or through their own boats. In 1921-1922, a new practice was inaugurated as shown in *The Henry L. Marshall, supra*, resulting in the seizure of foreign vessels beyond the three mile limit which had communicated with the shore by means of boats not their own. The British government at once

protested and apparently protested earnestly. At the same time, that government rejected a proposal to allow unlimited search within twelve miles of the coast. As a result of the attitude of foreign governments, the Government of the United States released all vessels seized beyond the three mile limit that had not made contact with the shore with their own boats and abandoned the practice of seizing these vessels.

Such was the situation when the Treaty with Great Britain was made.

2. The Treaty of May 22, 1924, Was Made to Settle in a Complete Way All Questions Involving the Interference With British Vessels Beyond Territorial Waters.

On January 23, 1924, the Hon. Charles E. Hughes, Secretary of State announced a treaty with Great Britain to prevent the smuggling of intoxicating liquors. The announcement was made in an address before the Council on Foreign Relations in New York City. Mr. Hughes reviewed at length the international problems which had arisen out of the seizures of foreign vessels beyond the three mile limit and which it was the purpose of the treaty to set at rest.* (American Journal International Law, Vol. 18, No. 2, Page 229).

*"*Questions arising from the smuggling of intoxicating liquors.*— Foreign nations are naturally tenacious of their rights upon the high seas, and, on the other hand, our Government cannot look with indifference upon the attempts of hovering vessels, claiming the protection of foreign flags, illicitly to introduce their cargoes of liquors into the commerce of the United States. This Government must use every proper means to put a stop to this illegal traffic. It should be remembered, however, that authority with respect to the high seas cannot be effectively conferred by acts of Congress if these are in contravention of international law, even

The treaty which was announced by Mr. Hughes had been signed at Washington on the day on which he spoke, January 23, 1924. Ratifications were exchanged and the treaty proclaimed by the President on May 22, 1924, 43 Stat. 1761.

In the proclamation of the President, the treaty is described as a convention "to aid in the prevention of the smuggling of intoxicating liquors into the United States."

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though such legislative acts as municipal law would govern the decisions of our own courts.

"Where international rights and obligations are involved, controversies not otherwise adjusted would naturally come before an international arbitral tribunal whose decisions would be governed by international law and would not be controlled by municipal law. This principle was explicitly recognized in the recent decision by Chief Justice Taft, as arbitrator in the controversy between Great Britain and Costa Rica, where the Chief Justice illustrated the point that, while in our system an act of Congress might for municipal purposes repeal a treaty, the United States could not thus get rid of an international obligation which would continue and would be enforced by an international arbitral tribunal. The Chief Justice said:

> 'This is not an exceptional instance of an essential difference between the scope and effect of a decision by the highest tribunal of a country and of an international tribunal. The Constitution of the United States makes the Constitution, laws passed in pursuance thereof, and treaties of the United States the supreme law of the land. Under that provision, a treaty may repeal a statute and a statute may repeal a treaty. The Supreme Court can not under the Constitution recognize and enforce rights accruing to aliens under a treaty which Congress has repealed by statute. In an international tribunal, however, the unilateral repeal of a treaty by a statute would not affect the rights arising under it and its judgment would necessarily give effect to the treaty and hold the statute repealing it of no effect.'

"The Government of the United States has repeatedly asserted that the limits of territorial waters extend to 3 marine miles outward from the coast line. This has been asserted by our Government in making claims upon other Governments. With respect to Spain's claim of jurisdiction over the waters adjacent to Cuba, Secretary Seward wrote to the Spanish minister as follows:

> 'It cannot be admitted, nor indeed is Mr. Tassara understood to claim, that the mere assertion of a sovereign, by an act of legislation, however solemn, can have the effect to establish and fix its external maritime jurisdiction. His right

In the preamble of the treaty it is recited that the two nations

> "Being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages:
>
> "Have decided to conclude a Convention for that purpose; * * *"

The Convention follows:

ARTICLE I.

The High Contracting Parties declare that it is their firm intention to uphold the principle that 3

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to a jurisdiction of three miles is derived, not from his own decrees, but from the law of nations, and exists even though he may never have proclaimed or asserted it by any decree or declaration whatsoever. He cannot, by a mere decree, extend the limit and fix it at six miles, because if he could, he could in the same manner, and upon motives of interest, ambition, or even upon caprice, fix it at 10 or 20 or 50 miles, without the consent or acquiescence of other powers which have a common right with himself in the freedom of all the oceans. Such a pretension could never be successfully or rightfully maintained. * * *

'In view of the consideration and facts which have been thus presented, the undersigned is obliged to state that the Government of the United States is not prepared to admit that the jurisdiction of Spain in the waters which surround the island of Cuba lawfully and rightfully extends beyond the customary limit of 3 miles.'

"Secretary Fish, writing to the British Minister in 1875, said: 'We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast.' And Secretary Evarts, in a communication to the Minister of Spain, concerning the visitation and firing upon certain American vessels near Cuba in 1880, said: 'The Government must adhere to the 3-mile rule as the jurisdictional limit, and the cases of visitation without that line seem not to be excused or excusable under that rule.' The general principle was thus stated by the Supreme Court of the United States in the recent case of the Cunard Steamship Company v. Mellon (262 U. S. 100, 122): 'It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal

marine miles extending from the coast-line outwards and measured from low-water mark constitute the proper limits of territorial waters.

ARTICLE II.

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United

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belt of the sea extending from the coast line outward a marine league, or 3 geographic miles.'

"In the Bering Sea arbitration it was held that the United States had no jurisdiction in the Bering Sea fisheries beyond the 3-mile limit and in the case of the British schooner *Sayward* the United States was required to compensate Great Britain for interfering with its sealing operations outside the 3-mile limit. The American-British Claims Arbitration Tribunal in December, 1920, awarded damages against the United States on account of the interference by officers with the British vessel *Coquitlam* because of transfer of cargo off the Pacific coast outside the 3-mile limit.

"It is quite apparent that this Government is not in a position to maintain that its territorial waters extend beyond the 3-mile limit and in order to avoid liability to other Governments, it is important that in the enforcement of the laws of the United States this limit should be appropriately recognized. It does not follow, however, that this Government is entirely without power to protect itself from the abuses committed by hovering vessels. There may be such a direct connection between the operation of the vessel and the violation of the laws prescribed by the territorial sovereign as to justify seizure even outside the 3-mile limit. This may be illustrated by the case of 'hot pursuit' where the vessel has committed an offense against those laws within territorial waters and is caught while trying to escape. The practice which permits the following and seizure of a foreign vessel which puts to sea in order to avoid detention for violation of the laws of the State whose waters it has entered, is based on the principle of necessity for the 'effective administration of justice.' (Westlake, Part I, p. 177.) And this extension of the right of the territorial State was voted unanimously by the Institute of International Law in 1894.

"Another case is one where the hovering vessel, although lying outside the 3-mile limit, communicates with the shore by its own boats in violation of the territorial law. Thus Lord Salisbury said,

States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall

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with respect to the British schooner *Araunah*, that Her Majesty's Government were 'of opinion that, even if the *Araunah* at the time of the seizure were herself outside the 3-mile territorial limit, the fact that she was, by means of her boats, carrying on fishing within Russian waters without the prescribed license warranted her seizure and confiscation according to the principles of the municipal law regulating the use of those waters.' A case similar to this was that of the *Grace and Ruby* (283 Fed. 476).

"It will be noted that in the case of the *Araunah* it was the vessel herself that was deemed subject to seizure outside the 3-mile limit, and not simply her small boats, and this was manifestly because of the direct connection between the conduct of the vessel and the violation of the law of the territory. It may be urged with force that this principle should not be limited to the case of the use by the vessel of her own boats, where she is none the less effectively engaged, although using other boats, in the illegal introduction of her cargo into the commerce of the territory. Such a case was that of the *Henry L. Marshall*, recently decided by the Circuit Court of Appeals of the Second Circuit (292 Fed. 487-488). The *Marshall*, a vessel sailing under British registry, in 1921 obtained clearance from the Bahama Islands laden with a cargo of intoxicating liquors. She had two clearances, both dated the same date, signed by the same collector of revenue, one of which stated that she had cleared for Halifax with the cargo in question and the other that she had cleared for Gloucester, Mass., in ballast.

"The same collector furnished two bills of health, simply differing as to destination. It was abundantly proved that the real object and only business of the *Marshall* was to peddle liquor along the coast of the United States and particularly did she pursue her vocation while lying from 9 to 10 miles off Atlantic City and sent liquor on shore pursuant to previous arrangements made in the United States by motor boats. She was seized outside the 3-mile limit and condemned. Circuit Judge Hough, speaking for a unanimous court, after referring to the case of the *Grace and Ruby*, said: 'The difference between the facts there presented and those at bar is that, instead of arranging to unload and deliver the cargo

not be exercised at a greater distance from the coast of the United States its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

ARTICLE III.

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason

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of the schooner by, through, or with some assistance from the schooner's crew or equipment (as in the case cited), the whole matter was performed by a previous arrangement with those controlling the *Marshall* but with small boats that did not belong to the schooner and were not even partially manned by men from her crew. But it is just as true in this case as it was in the case of the *Grace and Ruby*, that 'the act of unlading, although beginning beyond the 3-mile limit, continued until the liquor was landed.'

"The vessel was thus found to be engaged, not in the exercise of her admitted rights upon the high seas, but in unlawfully unloading her cargo into the territory of the United States, in 'an actual introduction of a part thereof into the commerce of the United States' contrary to its laws. It should be added that while the British Government originally made a protest in this case, it was finally withdrawn upon the ground that the vessel was not of *bona fide* British registry, and it should be said that in this withdrawal the British Government did not acquiesce in the principle of the ruling. In view, however, of the historic practice of nations in the protection of their territory from the violation of their laws by hovering vessels, the United States Government cannot admit that the accepted rules of international law preclude such action as that taken in the circumstances of the *Marshall* case.

"But it is apparent that, whatever measures this Government may believe that it is free to adopt in accordance with the principles of international law, these, so far as they are practicable, are far from adequate to meet the exigency; and, further, the diplomatic history of the United States reveals the fact that maritime powers, including the United States itself, are highly sensitive to attempts by foreign authorities to seize their vessels on the high seas in time of peace. In each case of seizure there are likely to be serious questions of fact and law, and at any time there may be

of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the United States, its territories or possessions on board British vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE IV.

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this Treaty or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations

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collisions of authority which would be embarrassing to friendly relations. It is precisely in matters of this description, where the sense of grievance and resentment are so easily aroused, that the effort should be made to reach an international agreement suited to the case. We need to put the measures that are required for the adequate enforcement of our laws on an impregnable basis and to invite and secure the friendly cooperation of the maritime powers.

"Again, foreign powers have complained of what they regard as a departure from international comity through the maintenance of the present restrictions of law under which their vessels are not permitted to enter our waters or call at our ports if they have cargoes of liquors on board, although these may be kept under seal and are not to be delivered within the territory of the United States. Nations who fully appreciate our authority, and our right to enforce our own policy, cannot understand such a restriction which interferes with their trade with countries other than our own. They can not understand why a ship from a foreign port with a cargo consigned to another foreign port is unable even to traverse our waters, or to visit our ports, because the cargo on

contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the Settlement of Outstanding Pecuniary Claims signed at Washington the 18th August, 1910, but the claims shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

ARTICLE V.

This Treaty shall be subject to ratification and shall remain in force for a period of one year from the date of the exchange of ratifications.

Three months before the expiration of the said period of one year, either of the High Contracting Parties may give notice of its desire to propose modifications in the terms of the Treaty.

If such modifications have not been agreed upon before the expiration of the term of one year mentioned above, the Treaty shall lapse.

If no notice is given on either side of the desire to propose modifications, the Treaty shall remain in force for another year, and so on automatically, but subject always in respect of each such period of a year to the right on either side to propose as provided above three months before its expiration modifications in the Treaty, and to the provision that if such modifications are not

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board, which is destined for other countries, is of the sort we do not wish for our own. In this situation there is the plainest opportunity for a fair agreement not in derogation of our principles but to aid in their proper enforcement—not only without the slightest departure from, but with a manifest increase in, the safeguards required for our protection against the introduction of intoxicating liquors.

"Accordingly, negotiations have been undertaken to reach an appropriate international agreement upon this subject and I am happy to say that such an agreement has been concluded with Great Britain today. There are other Powers which I believe are quite ready to act in a similar way. This will be a long step toward removing causes of irritation and it is precisely as we remove such causes that we shall really make progress in furthering the interest of peace."

agreed upon before the close of the period of one year, the Treaty shall lapse.

ARTICLE VI.

In the event that either of the High Contracting Parties shall be prevented either by judicial decisions or legislative action from giving full effect to the provisions of the present Treaty the said Treaty shall automatically lapse, and, on such lapse or whenever this Treaty shall cease to be in force, each High Contracting Party shall enjoy all the rights which it would have possessed had this Treaty not been concluded.

The present Convention shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington as soon as possible.

The treaty of May 22, 1924, was expressly stated therein to have been for the purpose of "avoiding *any* difficulties which might arise" between the United States and Great Britain "in connection with the laws in force in the United States on the subject of alcoholic beverages." There already had been difficulties. The United States had seized vessels beyond the three mile limit which had neither themselves nor by their own boats come within territorial waters. Great Britain had resisted the exercise of any such jurisdiction over such vessels. Such vessels in the past had been regarded by both nations, and by international law as being upon the high seas, and immune—if the sovereign chose to insist upon it—from any exercise of authority by another nation.

The treaty in order to avoid *any* difficulty was con-

cluded to define the jurisdiction which the United States might exercise beyond the three mile limit. That the rights conferred were exclusive and strictly limited is shown not only by the language conferring them but by Article I of the treaty. In that article the two nations agree that it it their firm intention to uphold the principle that *three marine miles from low water mark constitute the proper limits of territorial waters.* In other words, the preexisting rules of international law as maintained by the two nations are to remain unchanged except as specifically provided in the treaty.

Furthermore, the rights conferred upon the United States for dealing with vessels carrying or suspected of carrying alcoholic liquors were exclusive. Only the specific jurisdiction mentioned in the treaty was conferred and all other was prohibited. As stated by District Judge Morton in *The Frances Louise*, 1 Fed. (2nd) 1004, 1005-6:

> "The circumstances surrounding the execution of the treaty (of May 22, 1924) are matters of general knowledge. Vessels of British registry were laying off our coasts, delivering liquor to small boats, which smuggled it ashore. Seizures of such vessels were made by our officials, which were regarded by the British Government as unjustified by international law, and led to representations by the British Government to this country * * *. Under these circumstances the treaty was negotiated * * *. *I think both nations intended the treaty to deal with the matter in a complete way.*" (Italics ours).

In the above case the contention was made that even though the vessel had been seized beyond the limits

permitted by the treaty, its seizure was justified under international law, and that the treaty did not cut down that alleged general right of seizure. The court refused to consider the alleged general right under international law saying that the treaty dealt with the entire matter of seizures in a complete way.

In *The Sagatind,* 11 Fed. (2nd) 673, the Circuit Court of Appeals (Second Circuit) said:

> "We agree with *The Frances Louise,* 1 Fed. (2nd) 1004, that these treaties (with Great Britain and Norway) *exclusively* determine the status of vessels of appropriate nationality lying off the shore of the United States; * * *" (Italics ours).

and in the same case (4 Fed. (2nd) 928, 930), District Judge A. N. Hand, said:

> "The foregoing treaty extends any limitation which might exist upon the jurisdiction of the court to proceed against offending vessels which may be subject to forfeiture for violations of our laws 'prohibiting the importation of alcoholic beverages' to such cases as may come within the terms of the treaty, and, I think, also implies as an alternative rule of treaty-made law that vessels shall not be proceeded against for violation of such laws when seizure was made beyond the distance from our coast prescribed in the treaty. In other words, the treaty completely deals with the extreme right of seizure upon which initial jurisdiction of the cause of forfeiture must depend."

In *The Marjorie E. Bachman,* 4 Fed. (2nd) 405, 408, the court said:

"Moreover, as to British vessels, this country has expressly agreed not to seize them, except within the provisions of the treaty. As to them, if there is no case under the treaty, there is no case at all when they are on the high seas."

3. By the Treaty of May 22, 1924, Great Britain Granted the Right to Seize British Vessels in Certain Areas Beyond Territorial Waters for the Sole and Limited Purpose of Adjudicating the Vessel Only in Accordance with the Laws of the United States Prohibiting the Importation of Alcoholic Beverages.

As incident to the consideration of the provisions of the treaty, it is appropriate to bring to the attention of the Court the well established rules of interpretation and construction of treaties as announced by the late Mr. Justice Day in his monograph on treaties (38 Cyc., 961-982). The text was supplied by numerous decisions of this Court.*

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* At page 964 thereof, it is stated:

"In the United States, however, it [a treaty] is more than a contract between nations, being, as declared by the constitution, the supreme law of the land, and binding upon all the courts, both state and federal, and therefore obligatory upon all the people of the nation so that every citizen is under a duty to observe and respect the law of the treaty. A treaty, therefore, in the United States, provided it is self-executing, and its terms do not import a contract to be performed, but prescribe a rule by which private rights may be determined, is in the nature of a legislative act, and is placed by the constitution upon the same footing as an act of congress, * * *."

At page 975 thereof, it is further stated:

"The federal constitution provides that that instrument and the laws and treaties of the United States shall be the supreme law of the land, and binding upon the judges in every state, anything in the constitution or laws of any state to the contrary notwithstanding. By this provision treaties are expressly made superior to both the constitution and laws of the several states, and while there is no express provision in the constitution as to the effect of conflicts between treaties and acts of congress, they are placed by that instrument upon the same footing, each being declared to be the supreme law of the land, so that neither having any inherent

In the present treaty we find a complete code of what is agreed by both parties to the convention and exactly what may be done by each. No legislation whatever is called for or necessary to put the treaty into effect. The rights of both Nations, contracting parties, and all citizens or subjects of both are therein defined. The treaty, therefore, is a municipal law of the United States cognizable and enforcible by its courts.

The rules of construction of treaties are the same as those relating to simple contracts.

The case of *The Amiable Isabella*, 6 Wheaton 1, involved an interpretation of the Spanish Treaty of 1795 as it affected a prize vessel. The opinion was rendered by Justice Story, who, at pages 71 and 72, used the following language:

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superiority over the other, either may supersede the other, *and in case of conflict the one which is later in date will control.*" (Italics ours.)

At page 972 thereof, it is further stated:

"When a treaty does not require subsequent legislation to render it effective, after ratification it is the law of the land and will be enforced by the courts the same as a federal legislative act; but where a treaty is incomplete within itself and requires subsequent legislation to render it effective, manifestly it cannot be enforced by the courts until such necessary legislation is had; such as, for instance, where an appropriation of money is necessary to carry the treaty into effect, and until congress makes such an appropriation the treaty is incomplete, for under the constitution money cannot be appropriated by the treaty making power. A treaty is to be regarded in courts of justice as equivalent to an act of congress whenever it operates of itself without the aid of any legislative provision; * * *."

This Court has tersely remarked the distinction between treaties which are municipal laws of the land and enforcible by the courts and those not such in these words:

"A treaty, then, is the law of the land as an act of Congress is, whenever its provisions *prescribe a rule* by which the rights of the private citizen or subject *may be determined.* And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would a statute." (Italics ours)

(Head Money Cases, 112 U. S. 580, 598, 599.)

"In the first place, this court does not possess any treaty-making power. That power belongs by the constitution to another department of the government; and to alter, amend or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be, on our part, an usurpation of power, and not an exercise of judicial functions. It would be to make, and not to construe a treaty. Neither can this court supply a *casus omissus* in a treaty, any more than in a law. We are to find out the intention of the parties, by just rules of interpretation, applied to the subject-matter; and having found that, our duty is to follow it, so far as it goes, and to stop where that stops—whatever may be the imperfections or difficulties which it leaves behind.

"In the next place, this court is bound to give effect to the stipulations of the treaty, in the manner and to the extent which the parties have declared, and not otherwise. We are not at liberty to dispense with any of the conditions or requirements of the treaty, or to take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice. The terms which the parties have chosen to fix, the forms which they have prescribed, and the circumstances under which they are to have operation, rest in the exclusive discretion of the contracting parties, and whether they belong to the essence or the modal parts of the treaty, equally give the rule to judicial tribunals. The same powers which have contracted, are alone competent to change or dispense with any formality. The doctrine of a performance *cy pres*, so just and appropriate in the civil concerns of private persons, belongs not to the solemn compacts of nations, so far as judicial tribunals are called upon to interpret or enforce them. We can as little dispense with forms, as with substance."

The language quoted above was afterwards quoted with approval by Justice Harlan in the case of the *United States v. Choctaw and Chickasaw Nations*, 179 U. S. 494, 533, and has been followed in numerous decisions of this court.*

* In the case of the *United States v. Arredondo*, 6 Peters 689, the Court, speaking through Justice Baldwin, at page 710, used the following language:

"The laws under which we now adjudicate on the rights embraced in the treaty, and its instructions, authorize and direct us to do it judicially, and give its judicial meaning and interpretation *as a contract*, on the principles of justice and the rules of equity." (Italics ours)

The case of the *United States v. Reynes*, 9 Howard 127, involved the construction of the Treaty of St. Ildefonso between Spain and France in connection with the Treaty of Paris between France and the United States. At page 148, the Supreme Court, speaking through Mr. Justice Daniel, said:

"In the construction of treaties, the same rules which govern other compacts properly apply."

In the case of the *United States v. D'Auterive et al*, 10 Howard 609, involving the construction of the Treaties of St. Ildefonso and of Paris, mentioned in the preceding case, the Court used language at page 623, as follows:

"The compacts between governments or nations, *like those between individuals*, should be interpreted according to the natural, fair, and received acceptation of the terms in which they are expressed." (Italics ours)

The case of *Leavenworth, etc., R. R. Co. v. United States*, 92 U. S. 733, involved the disposition of lands which had been granted to an Indian tribe under a treaty dated June 2, 1825. At page 751 the Court used the following language:

"* * * but treaties, like statutes, must rest on the words used, —'*nothing adding thereto, nothing diminishing.*' In Rex v. Barrell, 12 Ad. & Ell. 468, Patteson, J., said, 'I see the necessity of not importing into statutes words which are not found there. Such a mode of interpretation only gives occasion to endless difficulty.' Courts have always treated the subject in the same way, when asked to supply words in order to give a statute a particular meaning which it would not bear without them." (Italics ours)

The case of *Tucker v. Alexandroff*, 183 U. S. 424, involved a construction of a treaty with Russia as it affected deserting seamen. The opinion was rendered by Mr. Justice Brown, who, at pages 436 and 437 used language as follows:

"Where the signatory powers have themselves fixed the terms upon which deserting seamen shall be surrendered, we have no right to enlarge those powers upon the principles of comity so as to embrace cases not contemplated by the treaty. Upon general principles applicable to the construction of written instruments, the enumeration of certain powers with respect to a particular subject matter is a negation of all other analogous powers with respect to the same subject matter. *Ex parte McCardle*, 7 Wall.

Let us now look to the terms of the treaty itself for the definition of rights here controlling.

When only does this treaty authorize seizure and for what purpose *only?*

The treaty in all its parts expressly confines its application to our Prohibition Laws and *their* enforcement.

The prelude is:

> The High Contracting Parties, "being desirous of avoiding any difficulties which might arise be-

506; Endlich on Stats. secs. 397, 400. As observed by Lord Denham in *Aspdin v. Austin*, 5 Ad. & El. (N. S.) 671, 684, 'where parties have entered into written engagements with express stipulations, it is manifestly not desirable to extend them by any implications; the presumption is that, having expressed some, they have expressed all the conditions by which they intend to be bound under that instrument.' The rule is curtly stated in the familiar legal maxim, *expressio unius est exclusio alterius.*"

* * * * *

"As treaties are solemn engagements entered into between independent nations for the common advancement of their interests and the interests of civilization, and as their main object is not only to avoid war and secure a lasting and perpetual peace, but to promote a friendly feeling between the people of the two countries, they should be interpreted in that broad and liberal spirit which is calculated to make for the existence of a perpetual amity, so far as it can be done without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence. It is said by Chancellor Kent in his Commentaries (vol. 1, p. 174): 'Treaties of every kind are to receive a fair and liberal interpretation according to the intention of the contracting parties, and are to be kept with the most scrupulous good faith. *Their meaning is to be ascertained by the same rules of construction and course of reasoning which we apply to the interpretation of private contracts.*" (Italics ours)

Among the rules for the construction of treaties found in 38 Cyc. at pages 969 and 970, by Mr. Justice Day, will be found the following:

"If the terms of the treaty are clear and unambiguous the courts must recognize and enforce it as written, notwithstanding the language of the treaty is inconsistent with the correspondence which preceded it; but if the treaty is open to construction they should endeavor to ascertain and give effect to the intention of the parties, and in so doing will adopt the same general rules which are applicable in the construction of statutes, contracts, and written instruments generally, and *particularly those applicable in the construction of contracts between individuals.*" (Italics ours)

tween them in connection with the laws in force in the United States *on the subject of alcoholic beverages;* have decided to conclude a convention *for that purpose;*" (Italics ours)

Then follows Article I of the treaty, preserving intact the three-mile limit of our territorial waters for the purpose of criminal and of judicial jurisdiction, as follows:

> "The High Contracting Parties declare that it is their firm intention to uphold the principle that *3 marine miles* extending from the coastline outwards and measured from low-water mark *constitute the proper limits of territorial waters.*" (Italics ours.)

Article II, following, concedes the right of search "*outside of the territorial waters,*" for the purpose of ascertaining whether the vessel or those on board are endeavoring to *import or have imported alcoholic beverages* into the United States, its territories or possessions in violation of the laws there in force." Section 3 merely fixes the limits of the treaty concessions "outside of the territorial waters."

The treaty provisions as to what may be seized, and the limits of the use to which the fruits of seizure and the incident search may be put, are then expressly defined by section (2) of this article, as follows:

> "(2) If there is reasonable cause for belief that the *vessel* has committed or is committing or attempting to commit an offense against *the laws of the United States,* its territories or possessions *prohibiting the importation of alcoholic beverages,* the *vessel* may be seized and taken into a port of

> the United States, its territories or possessions for *adjudication* in accordance with such laws." (Italics ours.)

The only laws *prohibiting* the importation of liquors into the United States are the Prohibition Laws. By that provision of the treaty it is stipulated:

(a) There must be a reasonable cause to believe "that *the vessel* has committed or is committing or is about to commit an offense against our laws prohibiting the importation of alcoholic beverages." This does not include the right to seize for suspected violation of our tariff laws, nor does it include the right to search for suspected violation of our Criminal Code, including Section 37, thereof. The treaty expressly confines the right to seize for suspected violations of our Prohibition Laws to do which, at present, the suspected purpose must be to bring liquor within 3 marine miles of our coast. See *Cunard S. S. Co. v. Mellon, supra,* 122.

After searching the vessel and questioning those on board if there is reasonable ground to believe the particular *vessel* itself has committed or is about to commit an offense against our laws prohibiting the importation of liquors, the *vessel* only may be seized and *adjudicated* under our prohibition laws. It is significant that while *those on board* were mentioned and the questioning thereof permitted in sec. (1) of Article II of the treaty, neither seizure nor adjudication as to *them* is permitted by sec. (2) thereof.

(c) Furthermore, when the vessel is seized it is for adjudication only under our laws prohibiting the importation of alcoholic beverages and not our tariff laws or Criminal Code. The treaty express-

ly so confines the conceded right. It limits what may be seized and the purpose of such seizure in express words to "the *vessel* may be seized and taken into a port of the United States for *adjudication* in accordance with *such* laws. *Such* laws is referable back to the phrase "prohibiting the importation of alcoholic beverages." There is, therefore, no right accorded by the treaty to seize a British ship for any other purpose than for adjudication, or to adjudicate it under any other than the prohibition laws of the United States. That conceded treaty right does not include the right to adjudicate under our Criminal Code, or the tariff laws, or even of parts of the Prohibition Laws of the United States, but is by the terms of the treaty expressly confined to such of our laws as "prohibit the *importation* of alcoholic beverages." (This is not such a proceeding, but one under the Criminal Code of the United States.)

The treaty, therefore, expressly confines that which may be seized upon the conditions found to the *vessel* only and that for *adjudication.* There is no right given by this treaty to seize the captain and crew for *any* purpose, or to proceed against them *under any law,* criminal or otherwise.

4. Every Consideration Which May Affect Construction of the Treaty Supports the Conclusion From the Plain Words Thereof That Great Britain Did Not Grant Any Right to Subject to Criminal Prosecution British Subjects Brought Into the United States as an Incident of a Seizure Under the Treaty.

As was said by the Circuit Court of Appeals for the Second Circuit in *The Sagatind,* 11 Fed. (2nd) 673, 675:

> "Whatever rights government derived from the treaties (with Great Britain and Norway) must be discovered in article 2 of each document. Of this article, section 1 relates wholly to search, and section 3 to the distance from shore at which all rights may and must be exercised. There remains section 2, * * *."

That section is drawn with great care and precision. There is no vagueness or ambiguity, as there should not be in a matter of such great importance to Great Britain as a departure from the inviolability of her merchant vessels on the high seas in time of peace. The only right conferred by the section is to seize *the vessel* if *the vessel* is reasonably believed to have violated the laws prohibiting the importation of alcoholic liquors, *and to institute legal proceedings against the vessel* in accordance with such laws.

There is no right conferred to proceed against those on board the vessel for violation of the laws prohibiting the importation of alcoholic beverages—and, *a fortiori*, for violation of any other laws. Of course, those on board the vessel must be brought into port with the vessel. They cannot be thrown overboard or set adrift in small boats. Furthermore, it is their duty to remain with the vessel until it is known whether she was legally subject to forfeiture, or should be returned to her owner. What their rights are when brought to an American port is dealt with below at length. For the present, it is enough to point out that, although those on board the vessel were considered and specifically referred to in section one of Article II, the treaty carefully differentiates between the vessel and those on board the vessel. Those on board may be questioned for the purpose of ascertaining whether

the vessel or they are endeavoring to import or have imported liquor into the United States, but the sole effect of suspicion regarding the conduct of those on board, under the treaty, is that it may *implicate the vessel.* For only the vessel may be seized if it is reasonably suspected of violating the law against the importation of alcoholic liquors. And after seizure the only judicial proceedings which are permitted are *against the vessel.*

In *Hennings v. United States,* 13 F. (2nd) 74, the Circuit Court of Appeals without deciding whether the crew of a vessel seized under the treaty could be proceeded against criminally, strongly intimated that the sole effect of the conduct of those on board the vessel might be to subject the vessel to forfeiture. The Court said:

> "The vessel may be seized if those on board have violated any law within the territorial jurisdiction of the United States *that would subject her to forfeiture.*" (Italics ours)

In this case the District Court had held that those on board a seized vessel could be subjected to criminal jurisdiction. The decision of the District Court was reversed on the ground that the defendants had not violated the laws of the United States specified because such laws were not in force at the place where the alleged violation took place. The other errors assigned were not passed upon.

The same intimation is contained in *The Marjorie E. Bachman,* 4 Fed. (2nd) 405, 408. In that case the vessel had been seized under the treaty and the crew arrested and held under criminal charges. Only the

libels against the vessel and the cargo were before the court but the court referred to the treatment of the crew, saying:

> "I may add that there is no evidence that the crew of the Bachman offered any resistance to the seizure, or that there was any danger in permitting them to remain on their own vessel, *and that this being so, there was no right to arrest them*, or to remove them from her. The treatment which they received and the behavior of the prize crew on the Bachman were indefensible." (Italics ours).

The treaty, then, makes a clear distinction between the questioning of those on board to ascertain what their conduct is or has been in regard to the laws prohibiting the importation of alcoholic liquors and the action which the United States may take as the result of that conduct, which is strictly limited to the seizure and adjudication of the vessel.

The reasons for such a distinction are clear. The treaty was not negotiated to apprehend and punish criminals. It cannot be doubted that Great Britain would have rejected a proposal to enlist her aid in punishing criminally British subjects who had violated or attempted to violate the customs laws or the prohibition laws of the United States—particularly if the proposal covered British subjects who had never been within the territorial limits of the United States. The attitude of Great Britain to such a proposal may be gathered from the fact that such offences are not among those for which extradition will be granted from Great Britain or Canada and were not even comprehended in the Treaty of June 6, 1924, entitled "To

Suppress Smuggling," Session Laws Pt. 2, 69 Cong. 1 Sess. p. 105. See Treaty of July 12, 1889, 26 Stat. 1508, supplemented by Treaty of December 13, 1900, 32 Stat. 1864, and Treaty of April 12, 1905, 34 Stat. 2903; Treaty of May 18, 1908, 35 Stat. 2035; Treaty of June 6, 1924, proclaimed July 17, 1925. It is not going beyond what this court will judicially notice to state that the policy of the laws forbidding the sale of alcoholic liquors is not the policy of the laws of Great Britain. The attitude, therefore, of the British Government toward persons offending our prohibition laws may be stated in the words of this court as:

> "willing to deliver up offenders against such laws as were essential to the protection of life, liberty, and person, while it would not be willing to do this on account of minor misdemeanors or of a certain class of political offences in which it would have no interest or sympathy." *United States v. Rauscher,* 119 U. S. 407, 420.

But the end sought to be accomplished by the Treaty of May 22, 1924, was not the apprehension and punishment of criminals. It was the seizure and forfeiture of *hovering vessels* used in introducing alcoholic liquors into the United States. By such seizure and forfeiture the United States was seeking to clear its coasts of these vessels and sought the cooperation of Great Britain in extending the area in which it might seize these vessels for the purpose of forfeiting them. So far as appears, nothing more was asked and certainly nothing more was granted. The sole subject matter of Article II of the treaty was the search, seizure and adjudication of hovering vessels. It dealt only with the forfeiture of property; it did not attempt

to deal with the criminal liability or punishment of British subjects on the high seas.

Clearly the construction of such a treaty between sovereign powers by which one power permits an encroachment upon its sovereignty by the other should be attended "with the highest good faith" (*Johnson v. Browne,* 205 U. S. 309, 321), and there should be no attempt to extend it beyond its undoubted subject matter. No nation has ever maintained the right in time of peace to take foreign subjects from foreign vessels on the high seas and subject them to criminal process for violation of municipal laws. And the right to seize and forfeit a vessel does not carry with it any implication of jurisdiction over those on board. The rights granted by Great Britain in the treaty of May 22, 1924, are no more than the rights of a belligerent to visit, search and seize a neutral blockade runner in time of war. A neutral blockade runner may be seized on the high seas and both vessel and cargo may be forfeited. But no action may be taken against the crew. The law was clearly stated by Mr. Seward, Secretary of State, to Mr. Welles, Secretary of the Navy, in a letter of December 31, 1861: (See 7 Moore, 838)

> "The Department has been informally apprised that Commander Woodhull, of the United States steamer CONNECTICUT recently exacted, as a condition of the release of members of the crew of the British schooner ADELINE, captured for a breach of the blockade, that they should enter into an engagement not to be employed in a similar proceeding, in future. It occurs to this Department that, as the requirement referred to is not warranted by public law, the commanders of blockading vessels should be instructed not to exact any similar condition for the release of persons found

on board of vessels charged with a breach of the blockade.

"It may be lawful to detain such persons as witnesses, when their testimony may be indispensable to the administration of justice, but, when captured in a neutral ship, they cannot be considered and ought not to be treated as prisoners of war. Angus Smith, John Mooney and John H. McHenry, the alleged British subjects above referred to, are consequently to be considered as absolved from the obligation represented to have been required of them by Commander Woodhull."

By the treaty of May 22, 1924, Great Britain recognized the blockade against alcoholic beverages established by the Coast Guard and permitted the seizure of vessels for the express purpose of forfeiting them. This peace time blockade called for no greater rights than a war time blockade and none were granted.

We submit therefore that the treaty of May 22, 1924, dealt in a complete and exclusive way with the jurisdiction of the United States over British vessels beyond the three mile limit; that that treaty conferred only the right to seize the vessels upon reasonable ground for belief that the vessels had violated the laws against the importation of alcoholic liquors into the United States and to adjudicate the vessels only in accordance with such laws; and that no right was given to seize British subjects upon the high seas or to subject them to judicial process when *ex necessitate* they might be brought into an American port upon a seized vessel.

5. The Defendants Ford, Harris and Evelyn, Having Been Brought Within the Jurisdiction of the United States by Virtue of the Treaty of May 22, 1924, May Not Be Proceeded Against in a Manner Not Permitted by the Treaty.

"Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision." Marshall, C. J. in *Foster v. Neilson,* 2 Pet. 253, 314.

"But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. An illustration of this character is found in treaties, which regulate the mutual rights of citizens and subjects of the contracting nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens. The Constitution of the United States places such provisions as these in the same category as other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof and all treaties made or which shall be made under authority of the United States, shall be the supreme law of the land.' A treaty, then, is a law of the land, as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute." *The Head Money Cases,* 112 U. S. 580, 598-599. See also *Chew Heong v. United States,* 112 U. S. 536, 540, 565.

The Treaty of May 22, 1924, clearly was meant to define certain rights of the citizens of Great Britain both upon the high seas and in the ports of the United States as well as to give other rights to the Government of the United States. There can be no dispute as to that. So clear is the treaty as to the rights of British subjects upon the high seas that it has been made the basis of decision in the Federal courts.

In *The Frances Louise*, 1 Fed. (2nd) 1004, the court dismissed the libel because the vessel had been illegally seized in violation of the treaty since the seizure took place more than an hour's run from the shore. In *The Marjorie E. Bachman*, 4 Fed. (2nd) 405, the court also dismissed the libel holding that the place of seizure, although within an hour's run of the shore, by a disguised speed boat used to purchase liquor was not within the distance contemplated by the treaty. See also *The Over The Top*, 5 Fed. (2nd) 838, 843-844. In *The Pictonian*, 3 Fed. (2nd) 145, the treaty was regarded as affecting the substantive law of the land, although that case has not been followed upon the point there decided. See *The Sagatind*, 11 Fed. (2nd) 673; *Hennings v. United States*, 13 Fed. (2nd) 74. In *The Sagatind*, 4 Fed. (2nd) 928 (affirmed 11 Fed. (2nd) 673) the District Court specifically found that

> "The foregoing treaty extends any limitation which might exist upon the jurisdiction of the court to proceed against offending vessels * * * to such cases as may come within the terms of the treaty * * *."

The Treaty of May 22, 1924, therefore, is a law of the land, and where applicable will be enforced by this court, as stated in *United States v. Rauscher*, 119 U. S. 407, 430, 431:

> "The principle we have here laid down removes this difficulty, for under the doctrine that the treaty is the supreme law of the land, and is to be observed by all the courts, state and national, 'anything in the laws of the states to the contray notwithstanding,' if the state court should fail to give due effect to the rights of the party under the treaty, a remedy is found in the judicial branch of the Federal government, which has been fully recognized. The remedy is by writ of error from the Supreme Court of the United States to the state court which may have committed such error. The case being thus removed into that court, the just effect and operation of the treaty upon the rights asserted by the prisoner would be there decided."

The case which we have just cited arose under the treaty with Great Britain of August 9, 1842, 8 Stat. 576 (since superseded by the treaty of July 12, 1889, 26 Stat. 1508). The treaty provided for the extradition by each nation upon demand of the other of fugitives from justice charged with any one of seven crimes specified in the treaty. The prisoner had been extradited from Great Britain upon a charge of murder on the high seas upon an American vessel in violation of R. S. sec. 5339. He was indicted and convicted for inflicting cruel and unusual punishment in violation of R. S. sec. 5347 upon the same member of the crew of the vessel with whose murder he had been charged in the extradition.

The case came before this court upon a certificate from the Circuit Court in New York asking whether the Circuit Court "had jurisdiction" to put the prisoner on trial for the second offence named consisting of the identical acts proved in the extradition.

This Court in proceeding to determine the question stated that the answer must lie in the construction of the treaty since that was the supreme law of the land and since the Court was called upon to enforce "*the rights of persons growing out of the treaty.*"

The treaty was expressed in affirmative terms. It provided that each nation upon *prima facie* proof should deliver to the other nation persons charged with any one of seven named crimes. The treaty did not say whether the person so surrendered might or might not be tried for any crime other than the one for which he was surrendered.

The Court found that prior to the treaty there was no right of extradition. The treaty changed this situation as to seven named crimes. But it did not intend to change the preexisting situation as to any offenses not mentioned in the treaty. Therefore, the Court concluded, it was very clear

> "That it was not intended that this treaty should be used for any other purpose than to secure the trial of the person extradited for one of the offences enumerated in the treaty. This is not only apparent from the general principle that the specific enumeration of certain matters and things implies the exclusion of all others, but the entire face of the treaty, including the processes by which it is to be carried into effect, confirms this view of the subject." (p. 420.)

The argument was pressed upon the court that when Great Britain surrendered a fugitive under the treaty he was given up absolutely and became as subject to the jurisdiction of our courts as any person within the territorial limits of the United States. But the court rejected the contention, saying:

"If upon the face of this treaty it could be seen that its sole object was to secure the transfer of an individual from the jurisdiction of one sovereignty to that of another, the argument might be sound; but as this right of transfer, the right to demand it, the obligation to grant it, the proceedings under which it takes place, all show that it is for a limited and defined purpose that the transfer is made, it is impossible to conceive of the exercise of jurisdiction in such a case for any other purpose than that mentioned in the treaty, and ascertained by the proceedings under which the party is extradited, without an implication of fraud upon the rights of the party extradited and of bad faith to the country which permitted his extradition. No such view of solemn public treaties between the great nations of the earth can be sustained by a tribunal called upon to give judicial construction to them.

"The opposite view has been attempted to be maintained in this country upon the ground that there is no express limitation in the treaty of the right of the country in which the offense was committed to try the person for the crime alone for which he was extradited, and that once being within the jurisdiction of that country, no matter by what contrivance or fraud or by what pretense of establishing a charge provided for by the extradition treaty he may have been brought within the jurisdiction, he is, when here, liable to be tried for any offense against the laws as though arrested here originally. This proposition of the absence of express restriction in the treaty of the right to try him for other offenses than that for which he was extradited, is met by the manifest scope and object of the treaty itself. The caption of the treaty, already quoted, declaring that its purpose is to settle the boundary line between the two governments; to provide for the final suppression of the African slave trade; adds, 'and for the giving up of criminals, fugitives from

justice, *in certain cases.'* The treaty, then, requires, as we have already said, that there shall be given up, upon requisitions respectively made by the two governments, all persons charged with any of the seven crimes enumerated, and the provisions giving a party an examination before a proper tribunal, in which, before he shall be delivered up on this demand, it must be shown that the offense for which he is demanded is one of those enumerated, and that the proof is sufficient to satisfy the court or magistrate before whom this examination takes place that he is guilty, and such as the law of the State of the asylum requires to establish such guilt, leave no reason to doubt that the fair purpose of the treaty is, that the person shall be delivered up to be tried for that offense and for no other." (p. 421-422.)

We submit that in the present case it is very clear that the treaty of May 22, 1924, was not intended to be used for any other purpose than to seize *vessels* under certain circumstances and to adjudicate *the vessels* in accordance with the *laws prohibiting the importation of alcoholic beverages into the United States.* In the present case as in the *Rauscher* case this is "not only apparent from the general principle that the specific enumeration of certain matters and things implies the exclusion of all others, but the entire face of the treaty * * * confirms this view of the subject." In the present case, also, it is clear that the treaty "did not intend to depart from the recognized public law which had prevailed in the absence of treaties" so far as the seizure of British ships was concerned. It was intended to change public law only to the extent specifically mentioned in the treaty—that is, to permit under certain circumstances the seizure of *British vessels* and the *adjudication of the vessels* in accordance with certain *specified* laws.

In the present case, also, it has been contended and doubtless will be contended before this Court, as in the *Rauscher* case, that when the British subjects came within the jurisdiction of the United States, not voluntarily but by virtue of authority exercised under the treaty, they became subject to the jurisdiction of our courts without condition or limitation. To this contention the *Rauscher* case is complete answer. Such a contention could only be made if upon the face of the "treaty it could be seen that its sole object was to secure the transfer of an individual from the jurisdiction of one sovereign to that of another." But in the present case it is plain that there was no purpose whatever to transfer any individual from the jurisdiction of Great Britain to that of the United States. The sole object was to permit the seizure of vessels under limited conditions for the purpose of adjudicating the vessels in accordance with the laws prohibiting the importation of alcoholic beverages.

In the present instance the District Court has not only attempted to exercise jurisdiction over British subjects brought within its territory by virtue of the treaty, *but it has attempted to try them for an offense not even referred to or contemplated by the treaty*—the crime of conspiracy in violation of Section 37 of the Criminal Code. While it appears to us beyond question that the District Court acquired no jurisdiction whatever over the British subjects, Harris, Ford and Evelyn, by virtue of their being brought into San Francisco under the treaty, it is difficult to see how a contention can even be seriously formulated that the District Court could try them for the crime of conspiracy. The only laws referred to in any way, directly or indirectly, in the treaty as justifying any in-

terference with British subjects or British vessels beyond the three mile limit are those prohibiting the importation of alcoholic beverages. If British subjects, brought into an American port as an incident to the seizure of a British vessel for purposes of adjudicating it under the laws prohibiting the importation of alcoholic liquors, can be indicted and convicted for conspiracy to violate the National Prohibition Act and the Tariff Act they can be similarly dealt with for any offense against American laws, even though, as in case of such a conspiracy, it is not an offence mentioned in the treaty of May 22, 1924, or in the extradition treaty. See treaty of July 12, 1889, 26 Stat. 1508, as amplified 32 Stat. 1864, 34 Stat. 2903. Such a result could hardly be regarded by Great Britain other than as—in the words of this court in the Rauscher case—a fraud upon the rights of the parties and bad faith toward the country which permitted the seizure. Under these circumstances a further quotation from the *Rauscher* case is peculiarly pertinent. On page 430, the court said:

> "Two other observations remain to be made. One of these is, that the operation of this principle of the recognition of the rights of prisoners under such circumstances by the courts before whom they are brought for trial, relieves the relations between the Executive Department of the United States government and the courts of a state before whom such case may be pending, of a tension which has more than once become very delicate and very troublesome."

It is not our function to point out to this court how delicate and troublesome a tension and embarrassment to the Executive branch of the Government

may be created by any such extension of the rights conferred by the treaty of May 22, 1924, as would be necessitated by the conviction of these British subjects upon the charge against them.

Mr. Hughes has clearly indicated the embarrassment to friendly relations between this country and foreign nations which such actions produce.

The *Rauscher* case, *supra,* has become the settled law of this country. It is not necessary to do more than cite the cases which follow it.

In *Cosgrove v. Winney,* 174 U. S. 64, the defendant was extradited for larceny of a boat. He gave bail and went back to Canada. When he returned for trial he found that he had been indicted for obstructing the attachment of the same boat. Upon *habeas corpus* the prisoner was discharged. It was held that his return was not voluntary being under compulsion of the bail that after the disposal of the charge upon which he was extradited he was entitled to return to Canada.

In *Johnson v. Browne,* 205 U. S. 309, the court again applied the principle of the *Rauscher case, supra,* saying:

> "While the escape of criminals is, of course, to be very greatly deprecated, it is still most important that a treaty of this nature between sovereignties should be construed in accordance with the highest good faith and that it should not be sought by doubtful construction of some of its provisions to obtain the extradition of a person for one offense and then punish him for another and different offense."

See also *Collins v. O'Neil,* 214 U. S. 113; *Lascelles v. Georgia,* 148 U. S. 537, 542-543.

The Courts below erroneously assumed that the manner by which the defendants Harris, Ford and Evelyn came within the territorial limits of the United States had no bearing upon the jurisdiction of the United States and cited *Ker v. Illinois,* 119 U. S. 436 and cases following it in support of this view. That case, however, was decided upon the same day as *United States v. Rauscher, supra,* the opinions being delivered by the same member of this court. In *Ker v. Illinois,* Mr. Justice Miller was at great pains to point out that the principle of that case—that the illegal arrest of an individual in a foreign country and the bringing of him to this country for trial upon a criminal charge did not affect the jurisdiction of the court—did not apply to cases where the defendant was brought to this country under authority of a treaty. He said:

> "In the case of *United States v. Rauscher,* just decided, ante, 407, and considered with this, the effect of extradition proceedings under a treaty was very fully considered, and it was there held, that, when a party was duly surrendered, by proper proceedings, under the treaty of 1842 with Great Britain, he came to this country clothed with the protection which the nature of such proceedings and the true construction of the treaty gave him. One of the rights with which he was thus clothed, both in regard to himself and in good faith to the country which had sent him here, was that he should be tried for no other offence than the one for which he was delivered under the extradition proceedings. If Ker had been brought to this country by proceedings under the treaty of 1870-74 with Peru, it seems probable, from the statement of the case in the record, that he might have successfully pleaded that he was extradited for larceny, and convicted by the verdict of a jury

> of embezzlement; for the statement in the plea is, that the demand made by the President of the United States, if it had been put in operation, was for an extradition for larceny, although some forms of embezzlement are mentioned in the treaty as subjects of extradition. But it is quite a different case when the plaintiff in error comes to this country in the manner in which he was brought here, clothed with no rights which a proceeding under the treaty could have given him, and no duty which this country owes to Peru or to him under the treaty." (Page 443.)

We therefore respectfully submit that the defendants, Ford, Harris and Evelyn, being brought into this country by authority exercised under the Treaty with Great Britain of May 22, 1924, came clothed with rights under that treaty, and that it was a violation of those rights to put them on trial for an offence, alleged to have been committed before they were brought to this country, against Section 37 of the Criminal Code. The District Court had no jurisdiction over these defendants.

PART II

THE PRESENT INDICTMENT CORRECTLY CONSTRUED DID NOT CHARGE A CRIME AND WAS CONSEQUENTLY DEFECTIVE. EITHER THE DEMURRER, OR THE MOTION TO QUASH OR THE MOTION IN ARREST OF JUDGMENT SHOULD HAVE BEEN GRANTED.

THE FACTS

The indictment upon which these defendants were presented for trial by the Grand Jury and upon which they have been convicted and sentenced appears on pages 5 to 18, inclusive, of the record.

The Inducing Paragraphs. The inducing paragraphs are paragraphs numbered I to VII, inclusive. Paragraph I alleges the enactment of "The National Prohibition Act" and that it "was and is now in full force and effect." Paragraph IV set forth the provisions of Section 3 of Title II of that Act.

Paragraph II alleges the enactment of the "Tariff Act of 1922" and that it "was and is now in full force and effect." Paragraph V sets forth Section 593, Subdivision (b) of that Act.

Paragraph III alleges the ratification of the Treaty with Great Britain of May 22, 1924, *and that the said treaty "was and is now in full force and effect." Paragraph VI sets forth in full Article II of the said treaty.*

Paragraph VII alleges that the Farallone Islands "were and are now owned and possessed by the United States" and sets forth their geographical position.

The Charging Paragraphs. These are paragraphs VIII (erroneously marked "VII") IX and X. Paragraph VIII charges the conspiracy; paragraph IX charges its duration; and paragraph X, the overt acts.

Paragraph VIII, charging the conspiracy, alleges that these defendants and others named did at the Bay of San Francisco conspire to

> "wilfully, unlawfully, feloniously and knowingly sell, transport, import, deliver, furnish and possess within the United States intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one percentum and more of alcohol by volume and fit for use and intended for use for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of the Act of October 28, 1919, known as the 'National Prohibition Act,' *and the convention, agreement, and treaty between the United States and Great Britain of May 22, 1924,* and intended for use for beverage purposes in violation of said Act and said Treaty;
>
> "(b) Wilfully, unlawfully, feloniously, knowingly and fraudulently import and bring into the United States, and to assist in importing and bringing into the United States merchandise contrary to law, to wit, whiskey, champagne, wine, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use and intended for beverage purposes within the United States, the said acts to be then and there unlawful and prohibited and contrary to the provisions of Section 593, subdivision (b) of the Tariff Act of 1922, and *the convention, agreement and treaty between the United States and Great Britain of May 22, 1924,* and intended to be imported

and brought into the said United States in violation of said Acts and Treaty." (Italics ours.)

In short, the conspiracy upon which these defendants were presented for trial and convicted alleged a conspiracy "to commit certain offenses against the United States," that is to say:

(a) To do certain acts alleged to be in violation of the "National Prohibition Act" *and the treaty of May 22, 1924.*

(b) To do certain acts alleged to be in violation of the "Tariff Act of 1922" *and the treaty of May 22, 1924.*

Paragraph IX charges that the said conspiracy continued until the filing of the indictment.

The Overt Acts. The overt acts alleged are contained in four subparagraphs to paragraph X. They are: Subparagraph (a), Causing the *Quadra* to be loaded with liquor at Vancouver and to proceed to a point within twelve miles of the Farallone Islands, *"and which said distance could be traversed in less than one hour by said steamer Quadra and by the motor boats hereinafter mentioned,"* and the unloading of such liquor at said point into said motor boats and its introduction by them into the United States. Subparagraph (b), The alleged unloading of certain liquor from the *Quadra* to the motor boat *903 B* and its introduction into the United States by said motor boats. Subparagraph (c), The alleged unloading of liquor from the *Quadra* upon another occasion into a motor boat and its introduction into the United States. Subparagraph (d), The alleged unloading of liquor from the *Quadra* to the motor boat *C-55* "*within a dis-*

tance from the Farallone Islands that could be traversed by said steamer Quadra in less than one hour and within a distance from said Farallone Islands that could be traversed by motor boat C-55 hereinafter mentioned in less than one hour."

It may be noted that in describing the *locus* of two of the four overt acts alleged the Grand Jury *used the exact language employed in Article II, Section (3) of the Treaty to describe the area within which the rights conferred by that Article might be exercised.*

These defendants severally by appropriate demurrers (Rec. 19-27), motions to quash (Rec. 27-31), motions for directed verdicts (Rec. 312-322, 325, 540-541, 591), and motions in arrest of judgment (Rec. 67-69, 69-71, 71-73, 638-640, 643-645, 648-649), raised the question of the sufficiency of the indictment. But all said motions were denied. (Rec. 41, 75-76, 78-79, 322, 325, 640, 645, 649, 541, 591).

The trial judge in his charge to the jury stated:

> "If you find that a conspiracy existed, *as alleged in the indictment,* and that some one or more of the overt acts were committed, as alleged, the question then followed: Were the defendants on trial, or some of them, connected with that conspiracy as parties thereto? (Rec. 600.)
>
> * * * * * * * *
>
> "I should state to you, Gentlemen, that *when you take the indictment into the jury room* you will find that the captain and crew of the *Quadra* are the first 23 men named in the indictment." (Rec. 611.) (Italics ours).

The said errors of the District Court in permitting these defendants to be tried and convicted upon the defective indictment were properly presented to the

Circuit Court of Appeals. (Rec. 650, 739-743, 745-746, 749-752, 754-755, 755). That court said:

> "It is argued that there can be no criminal offense in violating the treaty between this country and Great Britain. This is true, but the reference to the treaty may be rejected as surplusage and the indictment still states facts sufficient to state a crime. * * * The District Court did not err in overruling the demurrer and denying the motion to quash the indictment." (Rec. 845.)

ARGUMENT

1. Conspiracy to Violate the Treaty Was an Inherent Part of the Crime Charged by the Grand Jury.

It is obvious from the foregoing analysis of the indictment that the Grand Jury (1) regarded the treaty with Great Britain as a law of the United States against which an offense could be committed, (2) regarded the treaty as an essential element in making the alleged conspiracy unlawful; and (3) charged these defendants with a conspiracy to commit offenses against certain laws of the United States specifying in each instance the treaty *in conjunction with* a statute of the United States as constituting the law to be violated.

Clearly the Grand Jury regarded the treaty as providing the essence of the charge against these defendants. The Grand Jury were presenting sixty defendants for trial. Of these, twenty-three were British subjects seized on a British vessel on the high seas at least 5.7 miles from American soil. No evidence was adduced at the trial and presumably not before the Grand Jury that these men had ever come within the generally rec-

ognized territorial jurisdiction of the United States. At the time of these proceedings it was the position taken by the United States in a number of cases—which position has since been denied by two Circuit Courts of Appeals—that the treaty itself made unlawful certain acts done beyond the three mile limit but within one hour's steaming of the coast. See *The Pictonian*, 3 Fed. (2nd) 145; *The Over the Top*, 5 Fed. (2nd) 838; *United States v. Hennings*, 7 Fed. (2nd) 488, 490, reversed 13 Fed. (2nd) 74; *The Sagatind*, 8 Fed. (2nd) 788; affirmed 11 Fed. (2nd) 673. The Grand Jury clearly drew this indictment upon this premise. They, therefore, framed both charging paragraphs of the indictment to include a conspiracy to violate the treaty with Great Britain, that is, to do certain acts wholly beyond the territorial jurisdiction of the United States on the theory that the treaty made unlawful an importation or transportation of alcoholic beverages within the distance of our coast which could be traversed in one hour either by the *Quadra* or an attendant motor boat. This is not done in a separate count or even in a separate paragraph. It is done in each of the only two paragraphs which charge the conspiracy. So that proof of the charge made by the Grand Jury would be satisfied if it were shown that the defendants conspired to bring alcoholic beverages within the distance of our coast which the *Quadra* or an attendant motor boat could traverse in one hour in violation of the treaty of May 22, 1924. This as we shall show below, does not charge a crime.

So important did the Grand Jury regard the treaty in making unlawful the conduct charged against the defendants that in alleging two of the four overt acts

it used the exact language of the treaty to place the acts as taking place within the distance from the coast of the United States which the *Quadra* and the motor boats in question could traverse in one hour.

In the face of this indictment surely no one can say that this Grand Jury understood that the treaty did not make unlawful any conduct whatever and that the allegations based upon the treaty did not state a crime, they would have presented these defendants for trial. In any event this is not a question to be determined by anyone except the Grand Jury. As stated by this Court in *Ex parte Bain,* 121 U. S. 1, 9-10:

> "The learned judge who presided in the Circuit Court at the time the change was made in this indictment, says that the court allowed the words 'Comptroller of the Currency and' to be stricken out as surplusage, and required the defendant to plead to the indictment as it then read. The opinion which he rendered on the motion in arrest of judgment, referring to this branch of the case, rests the validity of the court's action in permitting the change in the indictment, *upon the ground that the words stricken out were surplusage, and were not at all material to it, and that no injury was done to the prisoner by allowing such change to be made.* He goes on to argue that the grand jury would have found the indictment without this language. *But it is not for the court to say whether they would or not.* The party can only be tried upon the indictment as found by such grand jury, and especially upon all its language found in the charging part of that instrument. While it may seem to the court, with its better instructed mind in regard to what the statute requires to be found as to the intent to deceive, that it was neither necessary nor reasonable that the grand jury should attach importance to the fact

that it was the Comptroller who was to be deceived, yet it is not impossible nor very improbable that the grand jury looked mainly to that officer as the party whom the prisoner intended to deceive by a report which was made upon his requisition and returned directly to him. As we have already seen, the statute requires these reports to be made to the Comptroller at least five times a year, and the averment of the indictment is that this report was made and returned to that officer in response to his requisition for it. How can the court say that there may not have been more than one of the jurors who found this indictment, who was satisfied that the false report was made to deceive the Comptroller, but was not convinced that it was made to deceive anybody else? And how can it be said that, with these words stricken out, it is the indictment which was found by the grand jury? If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says 'no person shall be held to answer,' may be frittered away until its value is almost destroyed." (Italics ours.)

Similarly in the present case while it may seem to the court that the Grand Jury would have returned the indictment even if the treaty had never been made, still it is not for the court to decide whether they would have done so or not. These defendants can only be tried upon the indictment as found by the Grand Jury especially upon *all* its language found in the charging part of that indictment.

2. The Indictment as Presented by the Grand Jury Cannot Be Changed in Any Way Directly or Indirectly.

In the present case the trial court did not change the indictment or delete any portion of it. On the contrary in its charge it presented the case to the jury to determine whether "a conspiracy existed as alleged in the indictment" and furthermore instructed the jury to take the indictment into the jury room with them. However, the Circuit Court of Appeals committed a much more serious error. That Court sustained the indictment and conviction by rejecting as surplusage the references to the treaty in the charging paragraphs which made the indictment fatally defective. This was done not only after the grand jury had presented the defendants for trial upon this charge but after the trial jury had found them guilty of a conspiracy *as alleged in the indictment*. This the Court had no power to do. See *Joplin Mercantile Co. v. United States*, 236 U. S. 531.

The Constitution of the United States in the Fifth Amendment thereto provides that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury," except in a class of cases of which this is not one.

In *Ex parte Bain, supra*, this Court had occasion to consider with the greatest care the propriety of deleting words from an indictment found by a grand jury in the light of the constitutional guarantee. In that case the indictment as presented by the grand jury and set forth in the opinion at page 4 charged that the defendants

> "and each of them made said false statement and report in manner and form as above set forth with intent to deceive *the Comptroller of the Currency and* the agent appointed to examine the affairs of said association, and to injure, deceive and defraud the United States, etc."

The words italicized were struck out by the lower court upon motion by the government. Upon the indictment so altered the defendant was tried and convicted. Upon petition for a writ of *habeas corpus* to this Court the petitioner was granted the writ. This Court after using the forceful language quoted above, held in the language of the headnote:

> "When this indictment is filed with the court no change can be made in the body of the instrument by order of the court, or by the prosecuting attorney, without a re-submission of the case to the grand jury. *And the fact that the court may deem the change immaterial, as striking out of surplus words, makes no difference.* The instrument, as thus changed, is no longer the indictment of the grand jury which presented it." (Italics ours.)

In *Dodge v. United States,* 258 Fed. 300, 305, (C. C. A. 2nd C.) the same rule was applied. The Court said:

> "At the close of the case counsel for the government moved to strike out as surplusage a portion of the first paragraph of the first count of the indictment and the word 'mutiny' from the first paragraph of the second count. Counsel for defendant at once said: 'No objection.' The court granted the motion. This is now assigned for error. That it was error of the most serious kind is not to be doubted. The rule is almost universally rec-

> ognized, both in this country and in England, that an indictment cannot be amended by the court, and that an attempt to do so is fatal to a verdict upon the count."

The same doctrine was applied in *Stewart v. United States*, 12 F. (2nd) 524 where the Court said:

> "At the commencement of the trial, by consent of counsel for all parties, the court struck from the body of counts 2 and 3 of the indictment, as surplusage, the words 'feloniously and' in one place, and the words 'and feloniously' in another. This action on the part of the court is now assigned as error."

Similiarly the courts have held consistently that since an indictment presented by a grand jury cannot be amended *directly* it cannot be amended *indirectly*. Thus in *United States v. Howard*, 132 Fed. 325, 344, the Court said:

> "The Supreme Court of the United States adheres very strictly to the rule that there can be no amendment of an indictment in our practice, even in matters which are immaterial, without a violation of the fifth amendment of the Constitution of the United States; and of course, it can no more be amended under the guise of importing into it outside records or documents by implication and intendment than by a more direct process, which is not permitted under the Constitution. *Ex parte Bain*, 121 U. S. 1."

In *Naftzger v. United States*, 200 Fed. 494, the Circuit Court of Appeals reversed the conviction obtained below applying the same doctrine. The Court said (p. 496):

"Counsel for the government contend that the recital of the indictment that the stamps were stolen from 'certain post offices in the state of Kansas,' is surplusage, and need not be proven, and that it is sufficed if made to appear that they were stolen elsewhere from the government. *We are of the opinion that, if the allegation had omitted the words quoted, it would have been sufficient; but having been alleged, the evidence must conform to and support the allegation.* The return of an indictment is the word of the grand jury only—a coordinate branch of the court. It is for that body, and for no other officer, to say what shall and what shall not be charged, because the fifth Amendment to the Constitution declares that:

> 'No person shall be held to answer * * * for an infamous crime, unless on a presentment or indictment of a grand jury.

In effect the government now insists on amending the indictment by striking out the words 'from various post offices in the state of Kansas.' That was what was in fact done in the case of *Ex parte Bain,* 121 U. S. 1." (Italics ours.)

In *United States v. Dembowski,* 252 Fed. 894, the indictment was defective as duplicitous, containing in one count charges of three offenses. Upon motion to quash, the government contended that it should be permitted to elect to rely on one of the offenses charged and nolle pros. the others. The court in denying this contention said (pp. 898, 899):

"It seems clear that, if the District Attorney is permitted to nolle pros. a portion of this indict-

ment, he will thus, in effect, be permitted to amend it, because, in that event, the indictment on which the defendant is tried will not be the same as that found by the grand jury. An amendment is, in the language of the Century Dictionary, 'The correction of an error in a writ, record, or other judicial document.' To amend is, according to Webster's New International Dictionary, 'To correct; rectify.' To amend is to 'free from error'; to 'remove what is erroneous, superfluous, faulty, and the like.' 2 Corpus Juris, 1317. In Words and Phrases, vol. 1, First Series, at p. 368 et seq., and in vol. 1, Second Series, at p. 199 et seq., numerous authorities are cited and quoted showing that an amendment may consist of either the addition to, or the withdrawal from, a pleading or document of a part thereof.

"It is, however, well established that, in view of the Fifth Amendment to the United States Constitution, which provides that no person shall be held to answer for * * *an infamous crime unless on the presentment or the indictment of a grand jury, except in certain military cases, an indictment returned by a federal grand jury cannot be amended without being first resubmitted to the grand jury for that purpose. *Ex parte Bain* 121 U. S. 1, 7 Sup. Ct. 781, 30 L. Ed. 849."

In the present case it is equally possible—indeed entirely probable—that many members of the grand jury voted to return the bill only because they believed that the treaty extended the scope of the laws of the United States including the conspiracy statute beyond the three mile limit. Others may have believed the matter doubtful but trusted that the question of law would be decided by the court and the indictment quashed if this position was erroneous. It seems impossible, from the form of the indictment, that any considerable

number of grand jurors regarded the allegations based on the treaty as unimportant and mere surplusage. Indeed so important have the courts regarded the reference made by the grand jury to the relevant law in the charging paragraph of an indictment, that where reference is made to a repealed statute the indictment is defective even though the conduct presented may violate another statute not mentioned. *United States v. Goodwin,* 20 Fed. 237.

We therefore respectfully submit (1) that these defendants could only be tried, if at all, upon the indictment drawn by the grand jury and especially upon all the language of the charging part thereof; and (2) that the grand jury in both charging paragraphs of the indictment presented a charge of a conspiracy to violate the treaty of May 22, 1924, and this language cannot be disregarded as surplusage.

3. The Treaty of May 22, 1924, Does Not Contain Penal Provisions or Make Unlawful Any Conduct Contemplated by These Defendants.

Much is said in some of the cases cited below as to whether the treaty of May 22, 1924, is "self-executing." Whatever this phrase may mean, it is wholly irrelevant to the question of whether the treaty makes unlawful any conduct not unlawful before it became effective. That question must be gathered from the provisions of the treaty.

Criminal legislation is not usually found in treaties, and there is none found in the present treaty. This treaty was made for the future; it is not linked with any legislation of the United States which may have existed when it was negotiated, or when ratifications

were exchanged. As set forth at length above, it provides, so far as here relevant, that under certain circumstances and in certain areas British vessels may be seized and taken into ports of the United States for adjudication in accordance with the laws then in force prohibiting the importation of alcoholic beverages. The treaty does not undertake to say what those laws may provide. That must be found in the laws. Congress may alter or repeal them without affecting the treaty. The treaty contents itself with stating that within the areas defined vessels may be seized for adjudication in accordance with those laws, whatever they may be.

Upon adjudication, if the laws prohibiting the importation of alcoholic liquors forbid certain conduct only within the territorial jurisdiction of the United States—see *Cunard S. S. Co. v. Mellon*, 262 U. S. 100, 122—the vessel, if it has not violated them, must be released. If Congress has the constitutional power to extend those laws to an area within ten, or twenty, or thirty miles of the coast of the United States,—See *Cunard S. S. Co. v. Mellon, supra*, 122—and does so extend them, then, upon adjudication, if a vessel, seized in accordance with the treaty, has violated them it must be forfeited. But the treaty itself does not, in any part thereof, attempt to extend the area within which existing laws shall be effective, or to require that Congress shall do so. It simply defines what rights Great Britain retains for its subjects on the high seas and what extensions of authority the United States may undertake, if it so chooses, without hindrance from Great Britain.

The vast weight of authority in the Federal Courts supports the view set forth above. The contrary view

has never been accepted by a Circuit Court of Appeals and by only two District Courts, one of which later receded from the view taken. See *Hennings v. United States, infra.*

The view that the treaty of May 22, 1924, has no effect to extend the operation of any of the Acts of Congress was first expressed by Judge Thomas, of the District of Connecticut in *The Over The Top,* (1925) 5 F. (2nd) 838, 844, 845. He said:

> "It must be noted that the treaty does not define the acts constituting an offense against the laws of the United States prohibiting the importation of alcoholic beverages. These acts are defined in the statute. If reasonable grounds exist for believing that a vessel under British registry is in fact guilty of contravening the Prohibition Law (Comp. St. Ann. Supp. 1923, par. 10138¼ et seq.), then our government may seize it if it is within the specified area, and when seized its fate may then be determined in accordance with our laws. If it is not within the specified area, it may not even be seized. But if it is within the specified area, it does not follow that it is for that reason violating our laws.
>
> "In support of its contention, the government cites and relies upon *United States v. The Pictonian,* 3 F. (2d) 145, recently decided in the Eastern district of New York, where it was held that the American-British Treaty did, as to ships of British registry, extend the operation of the criminal laws of the United States to the shifting line designated in the treaty. I have carefully read Judge Campbell's opinion and find myself unable to agree with its reasoning. The learned judge speaks of the treaty as self-executing. The significance of the phrase in this connection is somewhat obscure. As a treaty, there was no need of congressional legislation to make it effective, and

in this sense all treaties are self-executing. But if it was the intent of the government to make it a crime for a ship of British registry to unlade liquor within a sea zone on our coast, traversible in one hour, then that intent was not effectuated by the mere execution of the treaty. It is not the function of treaties to enact the fiscal or criminal law of a nation. For this purpose no treaty is self-executing. Congress may be under a duty to enact that which has been agreed upon by treaty, but duty and its performance are two separate and distinct things. Nor is there any doubt that the treaty making power has its limitations. What these are has never been defined, perhaps never need be defined. Certain it is that no part of the criminal law of this country has ever been enacted by treaty.

"The instances just cited indicate the practice of congressional action in order to effectuate the penal provisions of a treaty, and I have no doubt that such practice is necessary in order to accomplish the purposes of the treaties. It happens that the American-British Treaty here under consideration does not declare it a crime for a British national on a ship of British registry to sell liquor for purposes of importation into this country within one hour's running distance of our shore. Nor does the treaty forbid such an act. But even if such conduct had been prohibited by the terms of the treaty, no indictment could lie for transgressing that prohibition. If an indictment could not lie for violating the direct command of the Eighteenth Amendment to the Constitution until Congress had defined the offense and proclaimed the penalty, then the fiat of a treaty would be inadequate for such a purpose. No distinction exists here between the necessary basis of an indictment and that of a libel for forfeiture. If the facts do not warrant an indictment, they do not warrant a penalty.

"In this connection it may be well to emphasize the general nature of the provisions of the Tariff Act relied upon by the libelant. In the instance at bar, we happen to be dealing with liquor, but the legislation which is invoked is by no means concerned exclusively with this commodity. A British or French ship unlading coffee or coal within the 12-mile limit, and before entry and permission to unlade, would be just as guilty of violating these acts as if she were unlading liquor. Neither her nationality nor the nature of her cargo would have any bearing on the issues.

"Whether therefore the Senate and the Executive may constitutionally enact criminal legislation by the device of a mere treaty is a question which fortunately we need not discuss. It is sufficient to conclude that the American-British Treaty did not in fact enact new criminal legislation."

This view was followed by Judge Hutcheson of the Southern District of Texas, who in *The Panama* (1925), 6 F. (2nd) 326, 327, said:

"Since I have found that the Panama was outside of the treaty limits when seized, it is not necessary for me to dispose of the government's invocation of the decision of Judge Campbell, in *United States v. The Pictonian*, that the criminal laws of this country have by the treaty been extended in their application to the limits of the treaty, except to say that I thoroughly agree with Judge Thomas, in *The Over the Top*, that this has not occurred, and that, while Congress may pass laws extending the point of unlading beyond 12 miles, and to the limits fixed in the treaty, until Congress has enacted some municipal law governing the matter, nothing in the treaty changes or

affects our laws; the treaty expressly providing merely that His Brittanic Majesty will make no objection to the seizure of British ships within the treaty limits, and a disposition of these seizures in accordance with the laws of the United States."

In *The Sagatind* (1926), 11 F. (2nd) 673, the Circuit Court of Appeals for the Second Circuit found that the views expressed above were sound. In that case the vessels were when seized twenty-two miles from the coast. There was no evidence that they had ever been nearer. The court said (p. 675):

"Thus the question is: Were Sagatind and Diamantina within the United States, or the jurisdiction of its laws, on October 11, 1924?

"We are not called on to consider the international effect of our hovering statutes, or the power of Congress to prescribe what is commonly called the 12-mile limit. Nor are we required to pass on congressional authority specifically to extend our customs, internal revenue, and prohibition laws to a distance at sea measured by the speed of a hypothetical boat, for nothing of the kind has been attempted. But we do hold that no such extension of territorial jurisdiction is created by the treaty; in that sense the treaty is not self-executing, and on this point we cannot agree with *The Pictonian* (D. C.), 3 F. (2nd) 145, nor with *United States v. Henning* (D. C.) 7, F. (2nd) 488; but we do agree with, *The Over the Top* (D. C.), 5 F. (2nd) 838, and, *The Panama* (D. C.), 6 F. (2nd) 326, and the court below."

And in *Hennings v. United States* (1926) 13 F. (2nd) 74, the Circuit Court of Appeals for the Fifth Circuit took the same view of the purpose and effect of the treaty, saying (p. 75):

"It is contended on behalf of the United States that the British-American liquor convention of May 22, 1924 (43 Stat. 1761), is self-executing, has the force and effect of a statute, extends the territorial waters within its terms, and therefore the criminal laws of the United States dealing with liquor are in force in said territory, without the need of any additional statute to make them effective. This theory found favor with the District Court. *United States v. Henning*, 7 F. (2nd) 488. *But it is only fair to say that we are advised that that court has since receded from the position then taken.*

"The British-American convention of May 22, 1924, was undoubtedly intended to facilitate the United States in the administration of the prohibition and customs laws; and it may be conceded that a treaty may be self-acting, is coequal with an act of Congress, and is to be construed by the same rules. It may be further conceded arguendo that a treaty may extend a criminal statute over territory or persons not theretofore covered by statute. But the answer to the government's contention is that the treaty relied upon does not attempt to extend the criminal laws of the United States beyond the three mile limit. Extended argument is unnecessary to demonstrate this, and it is needless to set out the pertinent parts of the treaty in haec verba for the purpose of discussion." (Italics ours.)

After giving a brief synopsis of the several articles of the treaty the court continued:

"There is nothing in the treaty from which it could be reasonably inferred that it was the intention of the high contracting parties to extend the criminal laws of the United States beyond the three mile limit. The vessel may be seized if

> those on board have violated any law within the territorial jurisdiction of the United States that would subject her to forfeiture. Except as to provisions relative to sea stores and compensation for loss occasioned by improper acts, not germane to the subject here under discussion, that is the extent of the agreement."

In the present case the Circuit Court of Appeals recognized the soundness of the contention here made. The court said:

> "It is argued that there can be no criminal offense in violating the treaty between this country and Great Britain. This is true * * *." (Rec. 845.)

We respectfully submit that the reasoning of the cases cited above and their construction of the treaty of May 22, 1924, is entirely sound. The treaty does not make any conduct unlawful or create an offense which these defendants could conspire to commit.

4. The Indictment Presented by the Grand Jury Construed, as It Must Be, Strictly in Favor of the Defendants Does Not Charge a Crime.

It is the accepted rule of criminal procedure that in case of doubt an indictment must be construed strictly against the Government and in favor of the accused. *Williamson v. United States*, 207 U. S. 425, 458.

The indictment in the present case in the charging section presents a charge of a conspiracy to violate *in the conjunctive* certain statutes of the United States *and in each case* the treaty with Great Britain. As was stated in *The Over The Top, supra*, 843:

> "It would seem that the libelant does not take the view that the acts complained of constituted an infraction of our law by the very force of the language of the statute, *else there should be no reason to invoke the aid of the provisions of* American-British Treaty." (Italics ours.)

Similarly, in the present case it is clear that the grand jury did not take the view that the object of the conspiracy complained of was made unlawful by the statutes of the United States, alone and unsupported, but only by those statutes, aided and extended by the treaty. Since the treaty does not aid and extend the operations of those statutes, the indictment must be construed as charging a conspiracy, the object of which was erroneously thought to have been made unlawful by the treaty but which was not denounced by any law of the United States. Thus the indictment on its face is defective.

The Circuit Court of Appeals sought to eliminate the defect in the indictment by rejecting the allegations regarding the treaty as surplusage and sustaining the conviction upon the remaining allegations. But this the Court could not do without altering the very basis of the charge presented by the grand jury. An examination of the cases cited by the Circuit Court of Appeals in support of its ruling—that "the reference to the treaty may be rejected as surplusage and the indictment still states facts sufficient to constitute a crime"—shows that the Court wholly failed to understand the nature of the crime charged by the grand jury.

In *Bailey v. United States,* 5 F. (2nd) 437, *Remus v. United States,* 291 Fed. 501, and *United States v. Drawdy,* 288 Fed. 567, demurrers had been filed to in-

dictments for conspiracy. The indictments in each case alleged conspiracies to do a number of acts specified. Each act was alleged to be in violation of the prohibition laws. In each case the defendants had attacked one or more of the alleged objects of the conspiracy as not stating a crime; but in each case it was conceded that, at least, one of the objects of the conspiracy charged was illegal. The courts held as was stated in *United States v. Drawdy, supra,* p. 570:

> "The indictment alleges a conspiracy to do two things, one of which was the transportation of liquor, in itself criminal, and it would not matter in the slightest whether the other thing which was included in the conspiracy was criminal. Any conspiracy which involves the doing of a criminal act is itself criminal whether it involves other things which are criminal or not."

We shall not here discuss whether the cases cited were correctly decided, though much might be said on that subject, for they are clearly no authority whatever for the position taken by the Circuit Court of Appeals. In all the cases cited it was admitted that at least one of the objects of the conspiracy as charged was unlawful. In the case at bar the very language of the charging paragraph of the indictment makes it impossible to say that any object of the conspiracy as presented by the grand jury was unlawful. In the present case the grand jury did not charge a conspiracy (1) to violate the National Prohibition Act, (2) to violate the Tariff Act of 1922, and (3) to violate the treaty. On the contrary the charge was of a conspiracy (1) to violate the *National Prohibition Act and the treaty,* and (2) to violate the *Tariff Act of*

1922 and the treaty. Thus the grand jury did not take the view that the object of the conspiracy which they were charging was rendered unlawful by any laws of the United States alone and unsupported, but only by virtue of certain statutes named and, in each case, by the aid of the treaty with Great Britain. Clearly, therefore, the grand jury had in mind a conspiracy to accomplish its objects beyond the effective scope of the statutes referred to but within the area specified in the treaty. This, at any rate, is the conspiracy charged if the indictment is construed, as it should be, strictly in favor of the defendants. And such a charge is not the charge of a crime.

The cases cited by the Circuit Court of Appeals go no further than holding, in the language of *Bailey v. United States, supra,* 438, that;

> "It is not an objection that an indictment charges more than the proof can possibly show, *if what is well alleged constitutes an offence.*" (Italics ours)

The condition attached to this statement, upon the assumption of which the statement is made, is the very point at issue in the present case. The cases, therefore, do not in any way support the Circuit Court of Appeals.

The same may be said of *United States v. Weiss,* 293 Fed. 992. That case holds that upon a second indictment for the same offense for which defendants had previously been tried the plea of double jeopardy cannot be defeated by a difference in the indictments *as to the means by which the object of the* conspiracy was to be accomplished. The court held that it was not neces-

sary to allege the means to be employed and that the conspiracy was clearly the same conspiracy for which the defendants had previously been tried whatever might be alleged as to the means by which they sought to effectuate it. Clearly the case is entirely irrelevant to the point at issue here.

We, therefore, respectfully submit that the indictment in the present case construed in accordance with the established rules of criminal procedure, did not charge these defendants with a crime; that the indictment could not be substantially altered in the charging paragraphs by the court so that it would state a crime; and that the trial and conviction of these defendants upon this indictment was erroneous and the judgment below must be reversed.

PART III

THE DEFENDANTS, FORD, HARRIS & EVELYN, HAVE NOT VIOLATED SECTION 37 OF THE CRIMINAL CODE SINCE THEY WERE AT NO TIME PRIOR TO THE SEIZURE OF THE "QUADRA" WITHIN THE JURISDICTION OR SCOPE OF THAT LAW.

THE FACTS

Ford, Harris and Evelyn, together with the other defendants have been convicted of violating Section 37 of the Criminal Code. This section declares that if any two or more persons shall conspire to violate any law of the United States and any of them shall do an overt act in furtherance of the conspiracy, all are liable to penalties.

Ford, Harris and Evelyn were, as stated above, British subjects and officers of the British ship *Quadra*. They sailed from Vancouver on September 10, 1924, and on October 12, 1924 were off the Farallone Islands. The United States contends that they were 5.7 miles from those islands on that day. There is no evidence that they were ever nearer than that.

The conspiracy for which they have been convicted was alleged in the indictment to have been made within the Northern District of California and the overt acts to have taken place there. It is not contended by the Government, and there is no evidence to show, that the British subjects, Ford, Harris or Evelyn, were ever in the Northern District of California or in the United States. Their part in the conspiracy is alleged to have consisted in *transporting the liquor to a point on the high seas beyond the territorial limits of the United*

States for delivery there to others who should import it into the United States.

We respectfully submit that the District Court erred in not granting the motion to direct a verdict in favor of these defendants (Rec. 322, 325, 541, 591) and that the Circuit Court of Appeals erred in not sustaining the assignments of error on this point (Rec. 851).

ARGUMENT

1. Section 37 of the Criminal Code Is Not Operative Against British Subjects Upon a British Vessel on the High Seas.

In *Cunard S. S. Co. v. Mellon,* 262 U. S. 100, 122, this Court defined the territory subject to the jurisdiction of the United States as follows:

> "It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles. (citing cases)."

Within this territory the laws of the United States are clearly operative. In some instances those laws may be effective beyond these limits—if such is the intent of Congress—upon vessels registered under the laws of the United States or as to citizens of the United States wherever they may be, but such jurisdiction is not territorial, applying to all persons, but is based upon citizenship or allegiance to the United

States.* In *Crapo v. Kelly*, 16 Wall. 610, 624, 625, 626, this court, quoting from text writers, stated the rule as follows:

> "This rule is thus laid down by Mr. Wheaton in his treatise on International Law (8th Edition Art. 106 et seq): 'Both the public and private vessels of every nation on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the state to which they belong. Vattel says that the domain of a nation extends to all its just possessions, and by its possessions we are not to understand its territory only, but all the rights it enjoys. And he also considers the vessels of a nation on the high seas as portions of its territory. Grotius holds that sovereignty may be acquired over a portion of the sea.' As an illustration of the proposition that the ship is a portion of the territory of the State the author proceeds: 'Every state has an incon-

*And in *United States v. Rodgers*, 150 U. S. 249, 264, this court repeated the rule:

"It is true, as there stated, that, as a general principle, the criminal laws of a nation do not operate beyond its territorial limits, and that to give any government, or its judicial tribunals, the right to punish any act or transaction as a crime, it must have occurred within those limits. We accept this doctrine as a general rule, but there are exceptions to it as fully recognized as the doctrine itself. One of those exceptions is that offences committed upon vessels belonging to citizens of the United States, within their admiralty jurisdiction, (that is, within navigable waters,) though out of the territorial limits of the United States, may be judicially considered when the vessel and parties are brought within their territorial jurisdiction. As we have before stated, a vessel is deemed part of the territory of the country to which she belongs. Upon that subject we quote the language of Mr. Webster, while Secretary of State, in his letter to Lord Ashburton of August, 1842. Speaking for the government of the United States, he stated with great clearness and force the doctrine which is now recognized by all countries. He said: 'It is natural to consider the vessels of a nation as parts of its territory, though at sea, as the State retains its jurisdiction over them; and, according to the commonly received custom, this jurisdiction is preserved over the vessels even in parts of the sea subject to a foreign dominion. This is the doctrine of the law of nations, clearly laid down by writers of received authority, and entirely conformable, as it

testable right to the service of all its members in the national defence, but it can give effect to this right only by lawful means. Its right to reclaim the military service of its citizens can be exercised only within its own territory, or in some place not subject to the jurisdiction of any other nation. The ocean is such a place, and any state may unquestionably there exercise, on board its own vessels, its right of compelling the military or naval services of its subjects.'

"Chancellor Kent, in his Commentaries, says: 'The high seas are free and open to all the world, and the laws of every state or nation have there a full and perfect operation upon the persons and property of the citizens or subjects of such a state or nation.' 'No nation has any right or jurisdiction at sea, except it be over the persons of its

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is supposed, with the practice of modern nations. If a murder be committed on board of an American vessel by one of the crew upon another or upon a passenger, or by a passenger on one of the crew or another passenger, while such vessel is lying in a port within the jurisdiction of a foreign State or sovereignty, the offence is cognizable and punishable by the proper court of the United States in the same manner as if such offence had been committed on board the vessel on the high seas. The law of England is supposed to be the same. It is true that the jurisdiction of a nation over a vessel belonging to it, while lying in the port of another, is not necessarily wholly exclusive. We do not so consider or so assert it. For any unlawful acts done by her while thus lying in port, and for all contracts entered into while there, by her master or owners, she and they must, doubtless, be answerable to the laws of the place. Nor, if her master or crew, while on board in such port, break the peace of the community by the commission of crimes, can exemption be claimed for them. But nevertheless, the law of nations, as I have stated it, and the statutes of governments founded on that law, as I have referred to them, show that enlightened nations, in modern times, do clearly hold that the jurisdiction and laws of a nation accompany her ships not only over the high seas, but into ports and harbors, or wheresoever else they may be waterborne, for the general purpose of governing and regulating the rights, duties, and obligations of those on board thereof, and that, to the extent of the exercise of this jurisdiction, they are considered as parts of the territory of the nation herself.' 6 Webster's Works, 306, 307."

See also for illustrations of personal jurisdiction over citizens for acts done abroad, *The Hamilton*, 207 U. S. 398; *United States v. Bowman*, 260 U. S. 94.

subjects, in its own public and private vessels; and so far territorial jurisdiction may be conceded as preserved, for the vessels of a nation are in many respects considered as portions of its territory, and persons on board are protected and governed by the laws of the country to which the vessel belongs.'

"Wharton says: 'A ship in the open sea is regarded by the law of nations as a part of the territory whose flag such ship carries.' 'By this (he says) may be explained several cases quoted as establishing the lex domicilii, though they are only sustainable on the ground that the ship at sea is part of the territory whose flag she bears * * *In respect to principle, ships at sea and the property in them, must be viewed as part of the country to which they belong * * *.

The adjudicated cases in this country are to the same effect."

The subject was reviewed and stated by this court speaking through Mr. Justice Holmes in *American Banana Co. v. United Fruit Company,* 213 U. S. 347, 355, 356:

"It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress.

"No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law, and keep to some extent the old notion of personal sovereignty

alive. See *The Hamilton*, 207 U. S. 398, 403; *Hart v. Gumpach*, L. R. 4 P. C. 439, 463, 464; *British South Africa Co. v. Companhia de Mocambique* (1893), A. C. 602. They go further, at times, and declare that they will punish any one, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas. In cases immediately affecting national interests they may go further still and may make, and, if they get the chance, execute similar threats as to acts done within another recognized jurisdiction. An illustration from our statutes is found with regard to criminal correspondence with foreign governments. Rev. Stat. 5335. See further *Commonwealth v. Macloon*, 101 Massachusetts, 1; *The Sussex Peerage*, 11 Cl. & Fin. 85, 146. And the notion that English statutes bind British subjects everywhere has found expression in modern times and has had some startling applications. *Rex v. Sawyer*, 2 C. & K. 101; *The Zollverein*, Swabey, 96, 98. But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. *Slater v. Mexican National R. R. Co.* 194 U. S. 120, 126. This principle was carried to an extreme in *Milliken v. Pratt*, 125 Massachusetts, 374. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent. *Phillips v. Eyre*, L. R. 4 Q. B. 225, 239; L. R. 6 Q. B. 1, 28; *Dicey*, Conflict of Laws (2d ed.), 647. See also Appendix, 724, 726, Note 2, *ibid.*"

In short, there can be no challenge to the sovereign power of the United States to attach criminal conse-

quences to acts occurring within their territorial jurisdiction, or upon their ships, or to the conduct of American citizens wherever they may be. But the power of the United States does not run beyond these limits and it will not be supposed in the absence of the most express language that in enacting a general statute Congress intended it to apply to the acts of foreigners confined to foreign territory or to foreign ships on the high seas. For this Court has recognized and stated that the broad and apparently universal prohibitions of our criminal statutes must be read in the light of the foregoing principles and their application limited in accordance with them. In *American Banana Co. v. United Fruit Company, supra,* at 357, this Court said:

> "The foregoing considerations would lead in case of doubt to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain, In re Sawers,* 12 Ch. Div. 522, 528; *State v. Carter,* 27 N. J. (3 Dutcher) 499; *People v. Merrill,* 2 Parker, Crim. Rep. 590, 596. Words having universal scope, such as 'Every contract in restraint of trade', 'Every person who shall monopolize,' etc., *will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch.* In the case of the present statute the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of

the statute so far as the present suit is concerned." (Italics ours.)

It is clear, therefore, that the words of Section 37 of the Criminal Code apparently having universal scope must be "taken as a matter of course to mean only everyone subject to such legislation, *not all that the legislator subsequently may be able to catch.*" Viewed in this light it will hardly be contended that Section 37 of the Criminal Code is to be construed as generally applicable to the conduct of British subjects on British vessels. If the master and officers of a British vessel on the high seas bound for Brazil conspired to defraud the United States by selling inferior coal to a public vessel of the United States lying there and sent a wireless message to Brazil to effect the object of the conspiracy, it would hardly be thought that they had violated any law of the United States by such conduct. See *United States v. Bowman,* 260 U. S. 94. And if these defendants had sailed from Vancouver for La Libertad and, while on the high seas, had conspired to violate the National Prohibition Act and done some act on the vessel to effect the object of the conspiracy, no law of the United States would have been violated. For it is apparent that Congress has not sought to extend its jurisdiction to the regulation of the conduct of British vessels on the high seas.

In the present case it is also clear that evidence in the record discloses no violation of Section 37 by Ford, Harris or Evelyn. They are not shown to have entered into any conspiracy within the jurisdiction of the United States or to have ever been within that jurisdiction to commit an act in furtherance of the conspiracy. At most the evidence seeks to establish

that *wholly beyond the jurisdiction of the United States and its laws* they cooperated with persons in the United States whose conduct is alleged to have constituted a criminal conspiracy. But no law of the United States was operative where they were to declare this cooperation—even if it existed—a criminal conspiracy on their part. And there is no law of the United States or decision of this Court to warrant the wholly novel proposition that through the mere fact of a relationship to persons within the United States the criminal statutes of the United States reach out beyond its territorial jurisdiction and brand the conduct of British subjects on a British vessel on the high seas as criminal.

District Judge Morton in *The Marjorie E. Bachman,* 4 Fed. (2nd) 405, 408, referring to the dicta of the Circuit Court of Appeals in *Latham v. United States,* 2 Fed. (2nd) 208, said:

> "There can be no doubt of the correctness of the decision in that case; the instructions of the District Judge under which the conviction was returned can hardly be questioned. But the view of the Circuit Court of Appeals that the statute of the United States, which makes all persons aiding and abetting in a misdeameanor guilty as principals, reaches beyond the territorial limits of this country, and makes guilty under our laws persons who in foreign jurisdiction aid and abet in the commission of misdeameanors here, is a wide departure from what I have supposed the law to be. Mr. Fish, Secretary of State of the United States, wrote to the British Minister under date of January 22, 1875; 'We have always understood and asserted that pursuant to public law no nation can rightfully claim jurisdiction at

> sea beyond a marine league from its coast'. See Moore's Dig. Internat. Law, p. 731. And this seems to be the general understanding of the matter. Moreover, that statute makes no reference to vessels and does not undertake to make them forfeitable for offenses against our law committed by those on board them."

From whatever angle the present question is approached the problem always remains whether Section 37 shall be interpreted, as this Court has declared that all criminal statutes should be interpreted, in accordance with recognized international law.

The fact is that these defendants were never within the jurisdiction of the United States. And the further fact is that this court has never been willing to hold that a foreign subject, never within the jurisdiction of the United States, could be guilty of a criminal conspiracy against the United States even when cooperating with American citizens who were so guilty. In *United States v. Bowman*, 260 U. S. 94, 102-03, this Court after deciding that American citizens on an American ship on the high seas could be guilty of a conspiracy to defraud the United States, said:

> "The other defendant is a subject of Great Britain. He has never been apprehended, and it will be time enough to consider what, if any, jurisdiction the District Court below has to punish him when he is brought to trial."

Nor can the fundamental and novel character of the position which the Government must assume to support the conviction of Ford, Harris and Evelyn be altered or successfully obscured by a resort to the

language of legal fiction through the contention that these defendants were *constructively present* within the jurisdiction.

> "The doctrine of constructive presence, being a mere fiction of the law, should be applied with caution. In extending the rights of this country we are invading those of other nations. *The question is really one of international law.*" *The Marjorie E. Bachman, supra,* 408. (Italics ours.)

There is no more warrant in the decided cases for extending the scope of Section 37 beyond the jurisdiction of the United States through the fiction of constructive presence than to do so directly.

The cases of *Hyde v. United States,* 225 U. S. 347, and *Brown v. Elliott,* 225 U. S. 392, referred to by the Circuit Court of Appeals are no authority for extending the jurisdiction of the conspiracy statute to foreigners upon foreign soil or upon foreign vessels on the high seas. No such question was there involved. So far as here relevant, those cases involved only the question of the venue for the trial of defendants all of whom had within the limits of the United States entered into the relation of conspirators and, at least, one of them had, in each case, committed within the United States an overt act. The issue was expressly narrowed by the court to the question of venue:

> "The question, therefore, is presented as to the venue in conspiracy cases, whether it must be at the place where the conspiracy is entered into or whether it may be at the place where the overt act is performed, the Sixth Amendment of the Constitution of the United States requiring all criminal prosecutions to be in the 'district wherein

the crime shall have been committed'. *Hyde v. United States, supra,* 357.

Thus in the cases referred to there was no doubt that all the defendants had acted throughout the conspiracy within the jurisdiction of the United States. The sole issue was as to where they could be tried. This court held that since all incurred guilt when one of them committed an overt act, the crime might be regarded as having been committed by all at the place where the overt act occurred, whether or not all had been present there. The court said:

> "The Constitution of the United States (the Sixth Amendment) is not intended as a facility for crime. It is intended to prevent oppression, and its letter and spirit are satisfied if where a criminal purpose is executed the criminal purpose be punished. It is there that its victims are sought and defrauded. It is there that its perpetrators should be brought to the bar of justice for their acts; not for the mere conception of them but for the execution of them. The venue of his trial is thus made by the *criminal himself,* not determined by reasons or interests which may be adverse to him and used to his injury." *Brown v. Elliott,* 225 U. S. 392, 402. (Italics ours.)

It will thus be seen that these cases are entirely predicated upon the fact that the defendants *had all incurred criminal liability.* They had, within the jurisdiction of the United States, entered into a relationship made criminal by its laws when translated into action by any one of the conspirators. *These cases, therefore, are founded upon the existence of the very fact which does not exist in the present case.* For

in the present case no law of the United States reached to these defendants to brand any conduct of their's criminal. This is no case where a constructive presence "may be assigned to conspirators as well as to other criminals"; it is rather the other way around—it is only by assigning a constructive or fictitious presence to these defendants that they become fictitiously or constructively conspirators. *Hyde v. United States, supra,* and *Brown v. Elliott, supra,* are in no sense authority for any such proposition as that. If they had been, this court would not have been so careful to reserve the point in deciding *United States v. Bowman, supra.*

It should also be pointed out that in *Hyde v. United States* and *Brown v. Elliott, supra,* there were vigorous dissents by four members of this court, based upon the application of the fiction of constructive presence even to the extent to which it was involved in those cases. Mr. Justice Holmes, who wrote both dissenting opinions observed:

> "To speak of constructive presence is to use the language of fiction and so to hinder precise analysis." (p. 386.)

And again:

> "It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis." (p. 391)

It is clear, therefore, that *Hyde v. United States* and *Brown v. Elliott,* lend no support whatever to the proposition that Section 37 should be extended beyond

the jurisdiction of the United States to the conduct of British subjects on British territory—for if the statute be applied to these defendants it would have to apply to British subjects in England, or India, or Australia equally. In those cases there was no question that Section 37 had been violated within the jurisdiction of the United States; the only question was where the trial might be had. They, therefore, do not aid the government in any way.

Nor is the government aided by the principle that the laws of a sovereign are violated by acts which take effect within the jurisdiction even though the forces are set in motion from without, as where a shot fired from beyond the boundary lines kills a person within the jurisdiction. See *Strassheim v. Daily,* 221 U. S. 280; and compare *In re Palliser,* 136 U. S. 257; *Benson v. Henkel,* 198 U. S. 1; *Burton v. U. S.,* 202 U. S. 344, 383, which raise questions of venue only. In such a case it needs no fiction to say that a crime has been committed. For the act, wherever begun, was continued within the jurisdiction and produced its effect there. A situation denounced by the laws of the sovereign was produced within the territorial jurisdiction by the act of the defendant. The law was thus violated and it could not avail the actor when apprehended to contend that he had not been present in the jurisdiction. It was not his presence but his act which brought criminal consequences upon him.

But in the present case the prosecution of these defendants is not based upon any act of theirs which, in fact, took effect in the United States in violation of law. They are prosecuted solely because of their relation to persons in the United States who are charged with criminal acts. And thus we return once more to

the fundamental and inescapable problem, what law of the United States applied to these British subjects on a British ship on the high seas and made that relationship criminal? Clearly there was none.

We submit, therefore, that where the proof offered by the Government disclosed that the defendants Ford, Harris and Evelyn had never been within the scope of Section 37 of the Criminal Code and had never violated its provisions, the District Court should, as requested, have directed a verdict in their favor. For that Section of the law alone could be the basis of these defendants' guilt, whatever the court may have thought of the morality of their conduct. (See Rec. 43, 44, 45). As this court said in *American Banana Co. v. United Fruit Co., supra,* 357:

> "For again, not only were the acts of the defendant in Panama or Costa Rica not within the Sherman Act, but they were not torts by the law of the place and therefore were not torts at all, *however contrary to the ethical and economic postulates of that statute.*" (Italics ours)

PART IV

THE DISTRICT COURT ERRED IN RECEIVING IN EVIDENCE THE CARGO AND PAPERS SEIZED ON THE STEAMSHIP "QUADRA" BY THE UNITED STATES.

THE FACTS

At the outset of the trial all of the five defendants who are here petitioners before this court, joined in a motion to exclude and suppress evidence seized by the United States on board the Steamship *Quadra*. (Rec. p. 32 et seq.) This evidence consisted of portions of the cargo of that vessel and also papers seized on board the vessel. The motion stated the longitude and latitude of the *Quadra* at the time of the seizure as taken by her officers and alleged that the vessel was thirteen and one-half miles from the nearest territory belonging to the United States, the Farallone Islands. The motion further stated that neither the *Quadra* nor any of the motor-boats referred to in the indictment could traverse the said distance in one hour. This motion was supported by the affidavit of Captain Ford of the *Quadra*, one of the defendants. (Rec. p. 38.)

In opposition to the motion, the United States introduced an affidavit by Captain C. F. Howell, of the U. S. Revenue Cutter *Shawnee*. (Rec p. 39.) This affidavit stated no facts as to the longitude or latitude of the *Quadra* at the time of seizure, nor as to the speed of this vessel or any of the motor-boats. It merely stated that at the time of seizure the *Quadra* was less than twelve miles from territory of the United States and alleged the general conclusion that the vessel was at

a distance from the coast of the State of California that could be traversed in less than one hour by the vessel and the motor-boat *C-55*.

The court overruled the motion of the defendants (Rec. p. 42 et seq.), stating that for the purposes of the opinion the court would assume that the affidavit of Captain Howell of the revenue cutter stated the facts.

At the trial it was not contended by the United States that any intention existed to import liquor by means of the *Quadra* herself. The Government contended that the intention was to import liquor by means of the motor-boat *C-55*, and that therefore the distance which could be traversed by this motor-boat in one hour was the distance within which seizure of the *Quadra* might be made in accordance with the treaty of May 22, 1924. The Government produced the witness, August Anderson, for the purpose of proving the speed of the motor-boat *C-55*. This witness testified that he made a test of the motor-boat *C-55* on February 17, 1925 (Rec. p. 163); that the boat was not laden at the time of the test; that the test was in the waters of the bay of San Francisco; that he measured the distance over which he tested the vessel by measuring off the distance on a chart by a scale of the chart with dividers and in no other way. (Rec. p. 164.) On the basis of this test the witness said the speed of the motor-boat was 6.6 knots per hour. (Rec. p. 163.)

It further developed from the testimony of the Government witnesses Howell and Morse that at the time of the seizure the *Quadra* was in the open waters of the Pacific Ocean off the Farallone Islands. (Rec. 93, 147.) They testified that she was 5.7 nautical miles from the nearest land. (Rec. 106, 139, 144, 146.)

It further developed that at the time of the seizure the motor-boat *C-55* had on board two men and a cargo of 89 sacks of wine. (Rec. 95, 185.)

The defendants objected to the testimony of the witness Anderson, and to the introduction into evidence of property seized from the *Quadra,* and further, at the conclusion of the evidence moved to strike from the record the evidence seized on the *Quadra.* (Rec. 160, 162, 182-185, 316-317). The court overruled these objections and the action of the court was assigned as error. (Rec. 671, 685, 693, 737-739.)

The Circuit Court of Appeals sustained the position of the District Court. (Rec. 851.)

ARGUMENT

1. The Trial Court Erred in Overruling the Defendants' Motion to Suppress the Evidence Seized From the "Quadra," Since the Only Facts Before the Court Showed That the Vessel Had Been Seized in Violation of the Treaty of May 22, 1924.

By the treaty of May 22, 1924, Great Britain permitted the seizure of her private vessels beyond the territorial limits of the United States for adjudication in accordance with the laws in force in the United States prohibiting the importation of alcoholic beverages.

Section 3 of Article II provided that the rights conferred should

> "not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in *one hour* by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is

> intended to be conveyed to the United States, its territories or possessions by a vessel other than the one boarded and searched, it shall be *the speed of such other vessel* and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised." (Italics ours.) 43 Stat. L. 1761.

It would seem clear that under the treaty the United States has no right to make any disposition whatever of property seized in accordance with the extraordinary rights conferred by the treaty *until the seized vessel has been adjudicated and condemned under the laws prohibiting the importation of alcoholic beverages.* This is the sole purpose for which the treaty allows seizure to be made and until that purpose has been carried to conclusion the United States is merely the custodian of the property for the British owner and may only take such action in regard to it as is necessary to adjudicate it under the laws prohibiting the importation of alcoholic beverages. The reasons which lead to this view of the plain language of the treaty are discussed at length in Part I of this brief and need not be repeated.

However this may be, it is certainly the law that when the United States does proceed to libel the seized vessel in accordance with the laws prohibiting the importation of alcoholic beverages, they must establish *at the very outset* that the seizure was made within the area prescribed by the treaty.

> *The Sagatind*, 4 Fed. (2nd) 928, aff'd. 11 Fed. (2nd), 673.
> *The Over the Top*, 5 Fed. (2nd) 838.
> *The Marjorie E. Bachman*, 4 Fed. (2nd) 405.

If, therefore, in taking the very steps to dispose of the seized property mentioned in the treaty, the United States must prove the propriety of the seizure, it cannot be that the United States may make any other unauthorized disposition of the property without proving the propriety of the seizure. Otherwise the property might be disposed of and be lost to the owner without any opportunity being afforded to determine whether it had ever been seized rightfully—to say nothing of whether it was held rightfully. The highest good faith required that the United States justify the confidence reposed in them by Great Britain by making no disposition whatever of seized property without establishing that the seizure was made in strict conformity with the treaty.

The action of the District Court in the present case illustrates the grave danger of abuse of the rights conferred by the treaty which follows the failure to require proof that the seizure was in acordance with the treaty before permitting any disposition of the property.

At the outset of the trial these defendants, including the captain and officers of the *Quadra,* in whose legal possession the *Quadra,* her papers and cargo were at the time of seizure, moved to suppress the evidence and stated facts which, if true, showed that the vessel was illegally seized. In reply to this motion and the acompanying affidavit, the Government stated *no evidentiary facts whatever upon which the court could determine the issue raised* but introduced an affidavit by the Captain of the Revenue Cutter which merely recited a conclusion of law in the language of the treaty.

Upon this record the trial court erroneously refused to exercise its proper judicial function but denied the motion *assuming that the legal conclusion stated in the*

affidavit of the Government official was correct. Instead of requiring the Government to state facts upon which the court could base judicial action, the court substituted its faith that the officer of the Revenue Cutter knew the law and acted in accordance with it.

The facts subsequently developed show the unfortunate result of this course. They show that at the time when the court was thus led to rule that the seizure had been made "in strict accord with the treaty with Great Britain," (Rec. p. 58)—January 8, 1925—*neither the court nor the Government had the slightest knowledge of the essential facts which determined whether or not the seizure had been in acordance with the treaty.* For by the Government's own testimony the speed of the motor boat which admittedly determined the area within which the seizure might be made, *was not even tested until February 17, 1925.* (Rec. p. 163.) Therefore when the Government was alleging in January that the seizure was within the treaty limits and when the court was assuming that this legal conclusion was correct, the Government had not the slightest evidence of fact upon which to base its conclusion.

If the trial court had not permitted itself to be misled into abdicating its judicial function and had demanded knowledge of facts instead of faith in conclusions of law as the basis of its decision, it would have developed the fact that the Government did not know whether the vessel had been legally seized or not and might have avoided the later error into which it was led and which is discussed immediately below.

We therefore submit that the trial court committed serious error in overruling the defendants' motion to suppress the evidence upon the facts before the court.

2. The Evidence Adduced by the Government at the Trial Relating to the Speed of the Motor Boat "C-55" Did Not Cure the Error of the Trial Court in Overruling the Motion to Suppress the Evidence; And Action of the Trial Court in Subsequently Admitting Portions of the Cargo of the "Quadra" Into Evidence Was Further Error.

At the trial the evidence tended to show that the *Quadra* at the time of seizure was in the open waters of the Pacific Ocean at least 5.7 miles to the northwest of the Farallone Islands. At that time the motorboat *C-55* was alongside the *Quadra* laden with 89 sacks of wine and with two men aboard. There was no evidence of weather conditions or the state of the sea beyond the fact that there was an east offshore wind. (Rec. 341.)

There was also evidence to show that on February 17, 1925, four months after the seizure, a Government witness ran the *C-55* light, in the waters of San Francisco Bay between two points indicated on a chart. The witness measured the distance on the chart with dividers as 5,400 yards. There was no evidence of the time taken by the *C-55* to cover this course but the witness testified that at this trial she made a speed of 6.6 knots per hour. (Rec. p. 163-164.)

Upon this record the trial court overruled defendants' motion to exclude the evidence from the *Quadra*, and at the close of the trial to strike it from the record, the defendants having contended that there was no evidence to show that at the time of the seizure the *Quadra* was within a distance from the United States which *at that time and under the conditions then existing* the *C-55* could have traversed in one hour.

The trial court and the Circuit Court of Appeals took the position that it was immaterial what distance the *C-55* could traverse in one hour under the conditions prevailing at the time of the seizure. The Circuit Court of Appeals said:

> "We think this construction of the treaty is unwarranted by the language used: 'The rights conferred by this article shall not be exercised at a greater distance from the Coast of the United States its territories or possessions than can be traversed in one hour by the vessel.' We do not find any qualifying words after 'vessel' such as 'when loaded' or 'under conditions of wind and tide prevailing at the time of seizure.' We should not read into the treaty limitations which have not been written therein. The Courts of this country should be careful not to fritter away by construction concessions secured by the State Department for the purpose of combatting the rum running abuse. The treaty, fairly construed, embodies the consent of Great Britain that her ships may be searched and seized under proper conditions within such a distance from our shores as can be traversed in an hour by any of the boats on which they discharge their liquor. The evidence shows that the 'C-55' can traverse 6.6 knots within that time. The 'Quadra' was therefore subject to search and seizure if she was within 6.6 miles of the Farallones." (Rec. p. 854.)

This view of the meaning of the treaty is clearly erroneous and contrary to the well considered views of other Federal courts. Justice Thomas, in a learned opinion considering the above treaty, passed upon this identical situation, and declared in *The Over the Top,* 5 Fed. (2nd) 838, 844, as follows:

"There is absolutely no evidence in the record as to how far the sea sled could travel in an hour and in the dark with 25 cases of liquor and three men aboard as on the night it left the schooner. Over the Top with wind, weather and tide as it in fact existed on the night in question.

"As we are dealing here with fines and forfeitures, I cannot assume that this language was intended to cover an hypothetical case; that the seizure would be treated as legal if acomplished at a point constituting the greatest distance which the unladen ship could traverse in one hour at her maximum speed under the most favorable conditions of wind and tide. It seems to me that a rational construction requires us to measure the distance by the actual speed of the boat acomplished from the point of capture to the nearest available point on the coast in normal wind and tide and under the same conditions as pertain at the time of the seizure. Nor can I see any reason for applying any different rule when the distance is to be measured by the speed of the carrier from ship to coast. *It is the speed of the boat conveying liquor, and when it is engaged in conveying liquor to the United States, that must be determined. When conveying liquor, her speed may be below that of her speed when empty.*" (Italics ours)

The foregoing opinion solidly and soundly supports our position that the rights exercised by the United States under the treaty were not shown to have been exercised at a distance from the shores thereof which could be traversed by the *C-55* in one hour.

The case of *The Sagatind*, 11 Fed. (2nd), 673, 674, indicates the necessity that the speed of the claimed contact boat must accord with the principles laid down

by Judge Thomas in the *Over the Top* case, *supra.* Therein Justice Hough declares:

> "The Coast Guard 'Sea Sled' is said to have made under favorable conditions 33 miles an hour, but as to what her speed was in the open sea with a cargo of 25 cases of liquor aboard there is no evidence worth mentioning."

It can hardly be doubted that the cases cited above state the correct meaning of the treaty. It cannot be that the rights of British vessels on the high seas are made to depend on a theoretical speed of a motor boat which cannot be known to anyone at the time of the seizure. The seizure may not be made unless the seized vessel is within a distance of the coast which the attendant vessel can traverse in one hour. This clearly must mean can traverse in one hour *at that time, at that place and under those conditions.* The Government obviously cannot seize within a distance which the boat could traverse one hour with another engine. Similarly it cannot alter any other conditions existing at the time of seizure, but the evidence must tend to prove the speed under all the actual conditions.

The test made by the Government in the present case was not under conditions which were shown to approximate even remotely the conditions of sea, tide, current, wind, cargo and crew which affected the *C-55* at the time of seizure. The test, therefore, was no evidence whatever that the *C-55* could have traversed the distance from the point of seizure of the *Quadra* to the Farallone Islands in one hour.

> "An experiment introduced for the purpose of proving that an alleged result is obtained by a

certain act or operation, considered as existing in the case, should not be permitted unless the condition and circumstances under which the experiment is made are similar to those shown actually to have existed in the case." 10 *Ruling Case Law* (*Evidence* Sec. 190) 1002.

"In order that an experiment shall possess sufficient probative value to warrant the admission of evidence thereof, it is necessary that the circumstances under which the experiment is made shall have been similar to the circumstances prevailing at the time of the ocurrence involved in the controversy, *and if the conditions were dissimilar in an essential particular the evidence is rejected, especially if the conditions were more favorable to the party offering the evidence.*" 22, *Corpus Juris* (*Evidence*, 852), 758. (Italics ours.)

If the defendants' contention in regard to the construction of the treaty is sound, the prejudicial character of the error of the District Court is conceded by the Government. In its brief in opposition to the petition for certiorari in this case the Government said:

"If the seizure were unlawful because in contravention of the treaty, there might be merit in petitioners' claim that the admission at the trial of testimony relating to the seizure constituted reversible error, for that testimony undoubtedly had a vital bearing on the question of the defendants' innocence or guilt." (P. 19.)

We therefore respectfully submit that the action of the trial court referred to above was prejudicial error as to all these defendants and that the judgments as to them should be reversed.

PART V

THE LOWER COURTS ERRED IN PERMITTING EVIDENCE TO GO TO THE JURY OF THE IMPORTATION OF LIQUOR FROM THE STEAMSHIP "NORBURN" SINCE THAT IMPORTATION WAS NOT CONNECTED IN ANY WAY WITH THE CONSPIRACY AS CHARGED BY THE UNITED STATES ATTORNEY OR THE TRIAL JUDGE.

THE FACTS

Over the objection of the defendants the Government witness Sam Crivello was permitted to testify that in the latter part of April or the first part of May, 1924, he was employed by the defendant Quartararo to carry liquor from the *S. S. Norburn* to Oakland Creek, in the motor boats *California* and *Skidaddle*. (Rec. 217-225, 230-232.)

As to the other steamships referred to in the testimony of the witnesses for the Government evidence was introduced to show that these vessels had a common owner; that they all left the port of Vancouver laden with a cargo of liquor destined or consigned to Buenaventura, Columbia, or La Libertad, San Salvador, and that the shipper of all these cargoes was the Consolidated Exporters' Corporation, Limited, a Canadian Corporation of which the defendant Belanger was alleged to be a director. (See opinion of the Circuit Court of Appeals, Rec. 848.)

As to the *S. S. Norburn*, however, no evidence whatever was introduced as to the ownership of the vessel, the ownership of the cargo, the character of the cargo or any facts which connected that vessel with the al-

leged conspiracy as shown by the proof offered by the Government.

The introduction of the evidence regarding the transportation of liquor from the *S. S. Norburn* was duly assigned as error by these defendants. (Rec. 700-707.)

The Circuit Court of Appeals sustained the action of the District Court in admitting this evidence. (Rec. 858-859.)

ARGUMENT

1. The Importation of Liquor From the S. S. Norburn Was Not Connected in Any Way With the Conspiracy Submitted to the Jury.

At the opening of the trial, counsel for the Government outlined the conspiracy which the Government proposed to prove against these defendants as follows:

> "Now, the particular charge, gentlemen, that is made against these individuals * * * is a charge of conspiracy and the evidence that the Government will present will show you that there was a combination of individuals who are on trial here before you, and as part of that combination, in *September of 1924*, the ship 'Quadra,' owned by the Canadian Mexican Shipping Company, Ltd., of Vancouver, was loaded with a full cargo of liquor, * * * and the cargo was owned, as the evidence will show, by the Consolidated Exporters, Limited, of Vancouver; that in *September, etc.*" (Rec. 90.) (Italics ours.)

At the conclusion of the evidence the trial court in instructing the jury stated the scope of the conspiracy which the Government had [redacted] to prove as follows:

"The indictment in effect charges that a certain corporation formed in a foreign country, to-wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest, for delivery in another foreign country, to-wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.

"It is then charged that in effect Captain Ford, the Chief Officer, Mr. Harris, the Second Officer, Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that the liquor was for delivery at La Libertad, etc." (R. 601-602.)

The conspiracy, therefore, both as outlined by counsel for the Government, as developed by the testimony of the Government, and as stated by the trial court was that the defendants entered into a plan by which the Consolidated Exports, Ltd., a Vancouver Corporation, was to ship liquor in certain vessels ostensibly for delivery in Mexico or Columbia, but in reality to be delivered to various motor boats plying out of the harbor of San Francisco. These vessels were the *Malahat,* which left Vancouver May 23, 1924, the *Coal Harbor,* which left the same port July 5, 1924, and the *Quadra,* which left the same port on September 9, 1924. The Government with great care introduced evidence regarding the ownership of these vessels and their cargoes and showing the further fact that they cooperated with one another while lying off the coast of the United States.

The Government, however, did not introduce any evidence whatever showing any relationship between the *S. S. Norburn* and any of the other vessels either in respect to the ownership of the vessel or its cargo or with respect to the movement of that vessel. It remained entirely unconnected with the conspiracy charged against these defendants.

2. The Trial Court Admitted the Evidence Upon the Authority of a Decision Which Was Subsequently Overruled by the Circuit Court of Appeals.

Just prior to overruling the objection of the defendants to the testimony of Sam Crivello in regard to the *Norburn*, the Court had overruled a similar objection of the defendants in regard to the testimony of another witness. The Court said:

> "Basing the ruling on various decisions of the United States Courts of Appeal throughout the country, I held in the case of this very man Terry, whose name is exceedingly familiar to me, and I think he was out on bail from a conviction in this Court—I held in his very case that it was competent on a charge of conspiracy to land liquor to show other instances as bearing upon the general scheme or purpose." (Rec. 207.)

And later in referring to his ruling upon the testimony relating to the *Norburn*, the Court said:

> "If there was *a* conspiracy between the defendant Quartararo and this defendant (Sam Crivello) it would be sufficient to convict" (R. 222).
> "The thing after all is the conspiracy and the defendants having been apprised that the Government charged that they had entered into a con-

> spiracy to violate certain statutes that any acts which were in violation of those statutes and which concerned *any* of the defendants and any other person, or more than one person, *so that it would constitute under the law a conspiracy is admissible*" (R. 224). (Italics and parentheses ours)

The Court, therefore, admitted the testimony upon the supposition that it was proper in a trial for conspiracy to introduce evidence of *any conspiracy* to violate the statutes mentioned in the indictment by any of the defendants whether or not that conspiracy was connected in any way with the conspiracy for which the defendants were on trial. This ruling the Court based upon his own decision in the case of *Terry v. United States.*

The decision of the District Court upon which he based his ruling in the present case was reversed by the Circuit Court of Appeals, *Terry v. United States,* 7 F. (2d) 28. In that case several defendants were indicted for a conspiracy to violate the National Prohibition Act.

> "Upon the trial the court admitted testimony, over objection and exception, tending to prove that, about 6 weeks prior to the indictment at Allen's Wharf, the plaintiff in error employed one Frohn to transport several barrels of intoxicating liquor from Bodega Bay to a ranch house in the vicinity of Petaluma; that at or about the same time the defendant Zucker rented a barn from one Sousa in that vicinity, and that 9 barrels of intoxicating liquor were stored therein. There was no testimony of any kind, direct or circumstantial, tending to connect any of the other defendants with this prior incident or transaction." (7 F. (2nd) 28, 29.)

The Circuit Court of Appeals found that the action of Judge Partridge in admitting this evidence was error of the most prejudicial character and held, "for error in the admission of testimony as to the Bodega Bay incident, and the charge of the Court in relation thereto, the judgment is reversed and the cause is remanded for a new trial." In the course of its opinion the Circuit Court of Appeals said:

> "Furthermore, the scope of the conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope but it cannot extend it. * * *
>
> "In ruling upon the admission of testimony, and in the charge to the jury, the court proceeded upon the theory that some of the defendants might be convicted of one conspiracy and some of another; * * * The rulings admit of no other construction.
>
> "If, however, the charge of conspiracy in the indictment is merely that all the defendants had a similar general purpose in view, and that each of four groups of persons were co-operating without any privity each with the other, and not towards the same common end, but toward separate ends similar in character, such a combination would not constitute a single conspiracy, but several conspiracies, which not only could not be joined in one count, but not even in one indictment. *United States v. McConnell* (D. C.) 285 F. 164.
>
> "In other words, a conspiracy is not an omnibus charge, under which you can prove anything and everything, and convict of the sins of a lifetime. For these reasons the rulings complained of are erroneous and call for a reversal. Proof that the plaintiff in error was guilty of another crime was in itself prejudicial, and an instruction that he might be convicted of a crime not charged in the indictment cannot be sustained." (7 F. (2d) 28, 29, 30.)

The Circuit Court of Appeals subsequently reaffirmed this view of the law in *Crowley v. United States*, 8 F. (2d) 118.

3. The Circuit Court of Appeals Sustained the Action of the Trial Court Upon a Misapprehension of Fact.

In sustaining the action of the District Court in admitting evidence regarding the "Norburn incident" the Circuit Court of Appeals said:

> "Within these rules (i. e., the rules laid down by the Terry case) we think the testimony as to the 'Norburn incident' was admissible. The Government explicitly proved that *prior* to Crivello's reception of liquor from the 'Norburn,' he had been employed by Quartararo to receive and transport liquor from various vessels and to deliver it to Quartararo at Oakland Creek. Here was clear proof of a conspiracy between these two defendants within the allegations of the indictment. *The jury was warranted in finding from the evidence* that either Belanger and his corporation were original parties to the conspiracy, or that they and the officers and crew of the Quadra adhered to it subsequently." (Rec. 859). (Italics and parentheses ours.)

The testimony of the witness Sam Crivello was clearly misunderstood by the Circuit Court of Appeals. That witness testified on page 217 of the record that he was *first* employed by Quartararo in April or May, 1924, and that this first employment was to transport liquor from the *S. S. Norburn*. There is no evidence whatever in the record of any connection between Sam Crivello and Quartararo or any other de-

fendant after the "Norburn incident" until August, 924, at which date Crivello testified that *he went out* o the *S. S. Malahat* (Rec. p. 225). The witness fur- her testified that he did not meet the defendant C. H. Belanger until September, 1924 (Rec. p. 227).

The record therefore shows that the transportation of liquor from the *Norburn* was an isolated incident occurring prior to the time when any of the ships owned by the Canadian Corporation had left Vancou- ver. There is no evidence whatever to show that at he time these ships arrived off the coast of the United States Crivello was employed by Quartararo or that he had any connection with him, and there is no evi- dence to show any subsequent connection between Quartararo and Crivello until August, 1924.

If the Circuit Court of Appeals had understood the above constituted the evidence, and *all* the evidence, in he record of the conduct of Sam Crivello and Quar- tararo prior to August, 1924, the court could not have concluded that "the jury was warranted in finding from the evidence that either Belanger and his cor- poration were originally parties to the conspiracy (to import liquor from the *Norburn* in April or May, 1924) or that they and the officers and crew of the *Quadra* adhered to it subsequently." There was not the slight- est basis for even an inference that Belanger or the corporation had the slightest knowledge of the trans- action relating to the *Norburn*, or that when the "Nor- burn incident" had been closed in May, 1924, there was any conspiracy between Quartararo and Crivello to which anyone could adhere.

If the Court had understood the facts there is no reason to doubt that it would have taken the same posi- tion which it took in *Terry v. U. S., supra*, where (first

quoting a portion of the trial judge's charge) the Court said:

> "'In this case, therefore, even though you may find that there was no open or expressed declaration of purpose on the part of these defendants or the other parties concerned to unite in doing the acts charged, yet if you find that the acts of the parties were committed or accomplished in a manner or under circumstances which, by reason of their situation at the time and the conditions surrounding them, *give rise to a reasonable and just inference that they were done as the result of a previous agreement then you are justified in finding that a conspiracy existed between them to do those acts.*'
>
> "The italicized portion of the instruction does not contain a correct statement of the law.
>
> "It is also true, in cases of conspiracy, as in other criminal cases, that the prisoner is presumed to be innocent until the contrary is shown by proof; and, where that proof is, in whole or in part, circumstantial in its character, the circumstances relied upon by the prosecution must so distinctly indicate the guilt of the accused as to leave no reasonable explanation of them which is consistent with the prisoner's innocence. *United States v. Lancaster* (C. C.), 44 Fed. 896, 904, 10 L. R. A. 333." (p. 30)

Conspiracy indictments are so notoriously open to abuse that this Court will surely look with disfavor at any tendency to relax already inadequate safeguards of the rights of defendants in such cases. The action of the trial court in the present case tended to permit the very abuse of the conspiracy statute complained of

by the Conference of the Senior Circuit Judges, held on June 9 and 10, 1925, upon call of the Chief Justice of the United States under the Act of September 6, 1922. The first recommendation of the Conference was in part as follows; (See letter of Mr. Chief Justice Taft to Circuit Judges and District Judges of the United States dated June 16, 1925.)

> "A. We note the prevalent use of conspiracy indictments for converting a joint misdemeanor into a felony; and we express our conviction that both for this purpose and for the purpose—or at least with the effect—of bringing in much improper evidence, the conspiracy statute is being much abused.
>
> "Although in a particular case there may be no preconcert of plan, excepting that necessarily inherent in mere joint action, it is difficult to exclude that situation from the established definitions of conspiracy; yet the theory which permits us to call the aborted plan a greater offense than the completed crime supposes a serious and substantially continued group scheme for cooperative law breaking. We observe so many conspiracy prosecutions which do not have this substantial base that we fear the creation of a general impression, very harmful to law enforcement, that this method of prosecution is used arbitrarily and harshly. Further the rules of evidence in conspiracy cases make them most difficult to try without prejudice to an innocent defendant."

We respectfully submit, therefore, that the error of the Trial Court in admitting the testimony as to the "Norburn incident" was manifest and prejudicial to all the defendants and the judgments against them should be reversed.

PART VI

THE JUDGMENT AS TO THE DEFENDANT QUARTARARO SHOULD BE REVERSED ON ACCOUNT OF PREJUDICIAL ERROR AS TO HIM IN THE ADMISSION OF CERTAIN DOLLAR BILLS WITH WRITING THEREON ALLEGED TO BE BY HIM BUT WITHOUT ANY CONNECTION BEING SHOWN BETWEEN THESE BILLS AND THE ALLEGED CONSPIRACY.

THE FACTS

The facts relating to the admission of dollar bills and the error committed thereby can best be stated in the language of Judge McCamant, who wrote the opinion of the Circuit Court of Appeals. He said (Rec. 860-862):

> "Counsel for the Government in his opening statement to the jury said:
>
> > 'We will show you * * * that the individuals in San Francisco who were a part of this conspiracy * * * used a system of $1 bills to secure their cargo; that these bills were clipped in half, one-half being delivered to the captain or supercargo of the *Quadra,* and the other half going out in the small motor-boat that went to secure the particular load of cargo called for, these $1 bills having upon their back the list and order for the specific amount, and the kind of liquor that was to be secured from the *Quadra,* that when they got out there the bills were matched up, and when they were matched up the cargo was delivered to the particular motor-boat, and then they brought their cargo right in to San Francisco.'

"The Government proved that about Nov. 10, 1924, someone left eighty-three dollar bills at the Bank of Italy. These bills had been clipped in two and subsequently pasted together. The party having the mutilated bills had requested that they be exchanged for fresh money. It did not appear that Quartararo left them at the bank, but there was proof that endorsements on these bills were in the handwriting of Quartararo. With no other evidence connecting them up with the conspiracy these bills were received in evidence. There was an entire failure of proof as to the system by which business was transacted on the *Quadra* outlined in the opening statement.

"The bills contained endorsement of lists of liquor. The quantities of liquor listed on the bills were large, indicating that the party making the lists was trafficking in liquors. For example, one of the bills in Exhibit 31 contained on the front of the bill the following:

'10 Plymouth Gin
5 Royal George
5 Highland Queen
2 Drums Alcohol
Not to be filled,
only for record on order No. 15.'

"The endorsement on the back of this bill was:

'30 Burnett's Gin
45 Plymouth Gin'
—
75

"The bills were left with the bank about four weeks after the seizure and at a time when the conspiracy was at an end so far as the testimony shows. The effect of this testimony was not to

connect Quartararo with the conspiracy charged, but to create an inference that he was dealing in intoxicating liquors generally. *The writer believes that it was error to receive these bills in evidence, but error prejudicial to Quartararo only. The error was emphasized by a reference to the dollar bills in the charge of the Court. In the opinion of the writer the instruction requested by Quartararo withdrawing these bills from consideration by the jury should have been given. Terry vs. U. S.*, 7 F. (2d) 28. A majority of the Court think otherwise." (Italics ours.)

ARGUMENT

1. Although Eight Witnesses Were Examined or Cross-Examined by the Government as to the Alleged Method of Communicating Orders for Liquor from the Shore to the Ships at Sea, Not One Referred to the Dollar Bills.

Four witnesses were called by the prosecution, four men anxious to please the prosecution, who testified that they went out in small motor-boats to secure loads of cargo in connection with the alleged conspiracy. These men knew, if anyone on earth knew, the system, if any, by which they got their cargoes—and yet not a word was said by any of them even remotely touching these $1 bills.

In their order as produced by the Government, these four witnesses are as follows:

First: Magruder (Rec. 203-213), who, according to his own testimony, took the stand as a willing witness to tell *all* he knew about "this particular case." Long after the prosecution had these $1 bills in its possession, Magruder told the officials his story of his many trips in a motor-boat to obtain cargoes of liquor

and bring the same ashore—yet never a word about a dollar bill.

Second: Clance (Rec. 213 216), who testified before the Grand Jury, who gave a written statement to the prosecution, who was "willing to tell the Court and jury what I know about the facts of this case"—and who never uttered a word concerning any dollar bill.

Third: Sam Crivello, a defendant (Rec. 216-235), who long after the prosecution had these dollar bills, conferred with the prosecution and told them all he knew, who was angry because of Quartararo's refusal to help him after his arrest, who made the very trips claimed by the prosecution to be a part of this conspiracy, who admitted that he expected leniency in exchange for his testimony—and who said not a single word regarding the dollar bills.

Fourth: Marino Crivello (Rec. 252-263), also a defendant who expected leniency, who also conferred with the prosecution when these dollar bills were in its possession, and who also made the very trips claimed to be part of this conspiracy—and yet who gave no word of testimony regarding the dollar bills.

Four more witnesses were called, this time by the defense. These witnesses were on board the *Quadra* and were cross-examined at length by the prosecution concerning the liquor and the details of its delivery to the small boats. They were Harris, the chief officer on the *Quadra* (Rec. 330 to 401); Evelyn, second officer on the *Quadra* (Rec. 401-420); Gisbourne, who signed aboard the *Quadra* as an A. B. (Rec. 421-435); and Sargent, an oiler on the *Quadra* (Rec. 436-444), *and yet no dollar bill is mentioned.*

It is also significant that although the Government introduced in evidence a large number of papers, books

and documents seized on the *Quadra*, it produced no dollar bill from that vessel to substantiate its contention in regard to them. Nor did it produce any document referring to them directly or indirectly.

Furthermore, the Government contended that the bills were used to order liquor from the vessels at sea in this conspiracy. Yet of the 59 brands and kinds of liquor referred to on the dollar bills only 9 appear among the 53 brands and kinds of liquor appearing in the cargoes or cargo manifests seized and introduced in evidence in this case.

It is plain, therefore, that Judge McCamant was entirely correct in stating that the Government wholly failed to connect the dollar bills with the alleged conspiracy.

2. The Charge of the Trial Judge Aggravated the Error of Permitting the Evidence of the Dollar Bills to Go to the Jury.

In overruling the defendants' objection to the introduction of the dollar bills the trial court said:

> "It may be (later on) abundantly established, even to the satisfaction of you gentlemen (of the defense), that it (the dollar bill evidence) *does concern the immediate conspiracy charged. It may not; if not, I will properly instruct the jury.*" (Rec. 274.) (Italics and parentheses ours)

The court did not fulfill his promise. After that statement not a scintilla of evidence of any character was adduced by the Government to connect the dollar bills with the conspiracy. Therefore, following suggestion made by the trial court and in the absence of

evidence which the trial court in vain expected would be adduced, the defendant, Quartararo, proposed an instruction (Rec. 627) to the effect that these dollar bills be withdrawn from the consideration of the jury. Though this instruction was in entire accord with the previously expressed opinion of the trial judge, the instruction was nevertheless denied and an exception duly noted, as were motions to strike out the evidence. (Rec. 322-325.)

The instruction actually given by the trial judge was more injurious than no instruction at all. He said: (Rec. 608)

> "The Government has presented and the court has allowed in evidence here certain dollar bills. There is evidence here of an expert on the subject of handwriting who testifies that some of the writing at least on the back of those bills is in the handwriting of the defendant Quartararo. You must weigh the evidence of an expert in the same manner that you would the evidence of any other witness, etc. * * * Therefore, in determining whether or not you believe Mr. Quartararo wrote the list of liquor upon the back of these bills, you will weigh the testimony of Mr. Heinrich, etc. * * *"

The jury were thus led to understand that if they believed Quartararo to be the author of the writing on the bills, the bills were evidence of his complicity in the alleged conspiracy, although there was no evidence whatever to connect them with the conspiracy.

We respectfully submit that the grave and prejudicial error thus committed as to the defendant Quartararo is manifest and that the judgment as to him must be reversed.

PART VII

THE ADMISSION OF THE TELEGRAM OF JUNE 24, 1924, WITHOUT AUTHENTICATION AND WITHOUT CONNECTING IT WITH THE ALLEGED CONSPIRACY WAS PREJUDICIAL ERROR AS TO DEFENDANTS QUARTARARO AND BELANGER.

THE FACTS.

After both sides had rested, the prosecution asked leave to reopen its case for the introduction of new evidence. (Rec. 553, 554.) The jury was excluded for the first time during this trial. (Rec. 554.) Upon the Court's deciding to reopen the case the jury was recalled. (Rec. 562.)

The evidence offered and received over the objection of defendants (Rec. 565) was a typewritten telegram reading as follows (Rec. 565, 566):

"RUSH WIRE

"San Francisco, June 24/24.

"Geo. Norgan,
"Room 1052, Biltmore Hotel,
"Los Angeles, Calif.

"Merchandise not yet reached market. Therefore cannot report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H."

Evidence was introduced by the Government to show that the telegram was received at the office of the Postal Telegraph Company at the St. Francis Hotel, San Francisco, and that it was sent over the wires. The

agent of the telegraph company took the name and address of the sender as "C. H. Belanger, Somerton Hotel." It appeared that Belanger was registered at the Somerton Hotel on the day when the wire was sent. This was as far as the Government went in authenticating the wire.

No evidence whatever was offered by the Government to show any connection between the telegram and the alleged conspiracy.

After the telegram was received in evidence the Court granted defendants a continuance of one week. At the end of this time defendants produced the witnesses Williams and Henry. (Rec. 566-584, 584-589.) They testified that Williams, Belanger, Quartararo and Norgan, the addressee of the telegram offered by the Government, were developing some oil properties in New Mexico and introduced correspondence dated April, 1924, relating thereto; that on June 22, 1924, Belanger and Norgan conferred with Williams relating to a payment which was to be made by the parties interested in the oil venture through Norgan when certain machinery purchased reached the New Mexico property; that the machinery was then en route; that it was agreed that Williams should notify Belanger when the property arrived and that Belanger would try to secure Quartararo's assistance in making the payment; that on June 23, 1924, Williams informed Belanger by telephone that the machinery had not yet arrived; and that Belanger stated that he would so inform Norgan. (Rec 566, 577.)

The action of the Court in permitting this telegram to be received in evidence and to go to the jury was properly raised as error. (Rec. 642, 647, 753, 754.)

The Circuit Court of Appeals sustained the action of the District Court. (Rec. 863-865.)

ARGUMENT

1. The Court Erred in Receiving the Telegram in Evidence Because It Was Not Authenticated.

A letter or telegram is not a self-proving instrument nor is there a presumption that it is sent by the party who purports to send it.

In *Sprinkle v. United States*, 150 Fed. 56, 59, the court said:

> "The letter, however, was admittedly not in his handwriting, and the government should, therefore, before it can use that which was in itself incompetent as evidence, either for the purpose of connecting Young with the commission of the crime, or to procure and sustain a verdict against him, establish its case with that degree of certainty necessary to a conviction with such letter excluded."

This principle is well stated as follows, in *Vol. 14, Encyc. of Evidence*, page 742:

> "Generally a letter is inadmissible unless shown to have been actually written or subscribed by the purported author, or at his direction, and that it was duly sent and received. And the same is true of a telegram."

The case of *Consolidated Grocery Co. v. Hammond* (5th Cir.) 175 Fed. 641, 645, holds:

> "A letter is not a self-proving instrument, and proof of some kind tending to show its genuineness is always required. The mere contents of a written communication purporting to be a particular person's, are, of themselves, not sufficient evidence of genuineness. * * * The statement in

> a letter offered that it is in answer to a letter previously received cannot, of itself, make the letter admissible. To so hold would make the statement in the letter prove the writing and posting of the previous letter, and also prove its own genuineness. That cannot be permitted."

See also *Smith v. Shoemaker*, 17 Wall. 630; *Nichols v. Kingdom Iron Ore Co.*, 56 N. Y. 618, 3 *Wigmore on Evidence*, Sec. 2131, p. 547.

The case of *Drexel v. True*, 74 Fed. 12, 13 (8th Cir.), holds:

> "The defendants offered in evidence two telegrams, one purporting to be sent by the defendant in error, Park Godwin, and the other purporting to be sent by S. Zeimer & Feldstein to Park Godwin. The defendant in error objected to the introduction in evidence of these telegrams, and the court excluded them. Waiving the consideration of other objections to their introduction, it is enough to say the defendant did not lay, or offer to lay, any foundation for their introduction. They did not show, or offer to show, that they were sent by the parties by whom they purported to be sent, or that they were received by the parties to whom they purported to be addressed. No offer was made to authenticate them in any manner whatever, and their genuineness was not admitted. They were, therefore, properly rejected."

The only effort at authentication made by the Government was to show that the agent of the Telegraph Company took the name and address of the sender as "C. H. Belanger, Somerton Hotel," and that Belanger was registered at that hotel. Clearly this was no evidence at all. If the name "C. H. Belanger" and address "Somerton Hotel" had been signed to the tele-

gram they would not have constituted any authentication thereof under the rules of evidence quoted above. The fact that these words were written by the clerk of the telegraph company does not give them any added weight but, on the contrary, lays the evidence open to the added objection of being the merest hearsay.

The Circuit Court of Appeals felt that "the circumstances were sufficient to constitute a *prima facie* authentication of the wire." In his treatise on *Evidence* (2nd Ed. Sec. 2494, Vol. 5, p. 459) Professor Wigmore in defining a *prima facie* showing adopts the language of Brett, J., in *Bridges v. R. Co.*, L. R. 7 H. L. 213, as follows:

> "Perhaps the *best* statement of the question is this: '(The proposition) cannot merely be, Is there evidence? * * * The proposition seems to me to be this: Are there facts in evidence which if unanswered would justify men of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain?' "

This view has been followed extensively in the United States. *Woodward v. Chicago, M. & St. P. R. R. Co.*, 145 Fed. 577; *Pittsburgh C. C. & St. Louis R. Co. v. Banfill*, 206 Ill. 553; *Donovan v. Connecticut Co.*, 86 Conn. 82.

Clearly there were no facts in evidence which the defendants were called upon to answer. If his name and address had appeared as a part of the telegram he would not have been called upon to answer or explain this fact upon authorities cited above. He was similarly not called upon to answer the hearsay testimony of the clerk who wrote his name and address on the

telegram. There was thus no *prima facie* authentication of the wire.

The subsequent testimony adduced by defendants did not tend to authenticate the telegram. Neither the witness Williams nor the witness Henry had anything to say about it. They testified solely as to the fact that Belanger, Quartararo and Norgan were about June 24, 1924, engaged in a financial transaction relating to certain oil properties.

The Circuit Court of Appeals apparently thought that this testimony authenticated the telegram within the decision in *DeWitt v. U. S.*, 291 Fed. 995, 1002. But the case cited is radically different from the present situation. There an objection was made to the introduction of evidence of certain telephone calls. The defendant later admitted that he had made calls during the period mentioned and with the people mentioned, but attempted to deny their damaging effect. There is no such admission in the present case. The telegram therefore remained wholly unauthenticated and should have been withdrawn from the consideration of the jury.

2. The Telegram Was Not Shown In Any Way to Have Been Connected With the Alleged Conspiracy.

The Government contended that the word "merchandise" appearing in the telegram referred to liquor and that "Vince" referred to Vincent Quartararo. Even this contention if true does not show any connection between the telegram and the alleged conspiracy. For it was not shown that any liquor had failed to reach a market on June 24, 1924, or any other time or that Norgan was playing any part in the alleged conspiracy.

But the Government's contention was contrary to the only evidence relating to the relations in June, 1924, between Belanger and Norgan which was in the record. They were shown to have been an oil project and in connection with that project money was to be paid by Belanger and his associates, he hoped with the assistance of Quartararo, through Norgan when certain machinery reached the oil field. Thus the only evidence in the record negatived the wholly gratuitous assumption made by the Government that in a telegram from Belanger to Norgan the word "merchandise" referred to liquor.

We have already pointed out in Part V above the error of receiving in a conspiracy trial evidence not shown to be connected with the conspiracy developed by the Government's proof.

That the telegram—particularly under the circumstances in which it was introduced—was prejudicial to the two defendants concerned, cannot be doubted.

The language of *Sparks vs. Territory of Oklahoma*, 146 Fed. 371, is particularly pertinent:

> "Every litigant has the legal right to a fair and impartial trial of the issues which his case presents according to the law and the evidence applicable to those issues alone. The submission to the jury for their consideration of extraneous issues, or of evidence which is neither relevant nor material to the questions upon trial, is a violation of this right, and it constitutes a fatal error, because it tends to withdraw the attention of the jury from the issues actually involved, and to lead them to decide the case upon false issues, and in that way to reach an erroneous result."

The principle that the erroneous admission of evidence against an accused in a Federal Court will be

presumed to have been prejudicial unless it is made to appear beyond a doubt that it was harmless, is supported by the following cases:

Deery v. Cray, 5 Wall. 795, 807.
Sprinkle vs. U. S., 150 Fed. 56.
Williams v. U. S., 158 Fed. 56.
Gilmer v. Higley, 110 U. S. 47.
Boston R. R. Co. v. O'Reilly, 158 U. S. 334, 337.
U. S. v. Daubner (D. C.) 17 Fed. 793.
Resurrection Gold Mining Co. v. Fortune Gold Mining Co., 129 Fed. 668.

The effect of the admission of such testimony is pointed out by Justice Harlan of the U. S. Supreme Court in *Boyd vs. U. S.*, 142 U. S. 450, 458.

> "Proof of them only tended to prejudice the defendants with the jury, to draw their minds away from the real issue and to produce the impression that they were wretches whose lives were of no value to the community and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving the punishment of death. * * * However depraved in character and however full of crime their past lives may have been, the defendants were entitled to be tried upon competent evidence and only for the offense charged."

See also:

Ford vs. U. S., 259 Fed. 552.
Crowley vs. U. S., 8 Fed. (2d) 119, (9th Cir.)
Heitman vs. U. S., 5 Fed. (2d) 889 (9th Cir.)
Beyer vs. U. S., 282 Fed. 227 (3d Cir.)
Thompson vs. U. S., 283 Fed. 896 (3d Cir.)
Carpenter vs. U. S., 280 Fed. 600 (9th Cir.)
Kepl vs. U. S., 299 Fed. 591 (9th Cir.)
Fish vs. U. S., 215 Fed. 549 (1st Cir.)

We, therefore, respectfully submit that the error of the admission of this telegram prejudiced the defendants Belanger and Quartararo, and for this reason the judgments as to them must be reversed.

CONCLUSION.

For the reasons set forth at length above in Parts I to VII, inclusive, we respectfully submit that the verdicts and judgments against the defendants, Ford, Harris, Evelyn, Quartararo and Belanger, were erroneous and should be reversed.

Respectfully submitted,

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Office Supreme Court
FILED
OCT 25 1926
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

STATEMENT OF THE CASE

The argument contained in this brief is supplemental to that in the principal brief heretofore filed on behalf of the petitioners (defendants below). In that

brief the case has been stated and only the facts relevant to the argument here urged will be stated in connection with that argument.

SPECIFICATION OF ERROR

(In Addition to Errors Specified in Principal Brief)

(8) The District Court erred in holding that venue was properly laid in that court to try an offense consisting of a conspiracy entered into beyond the jurisdiction of the United States and an overt act in furtherance thereof committed in the Northern District of California. The Circuit Court of Appeals erred in sustaining the action of the District Court.

SUMMARY OF ARGUMENT

PART VIII

The record clearly shows that the crime as developed by the proof of the Government and as submitted by the trial judge to the jury consisted of a conspiracy entered into in Canada and overt acts in furtherance thereof in the Bay of San Francisco. This was the theory of the trial judge and the only theory which can connect the vast number of otherwise unconnected and unrelated acts admitted in evidence against all defendants. Such conduct does not constitute a crime committed in the Northern District of California nor a crime begun in one district of the United States and completed in another. Therefore venue was not properly laid in the District Court and that court was without jurisdiction of the offense, if any.

ARGUMENT

PART VIII

The District Court Had No Jurisdiction of the Crime As Developed by the Proof of the Government and as Submitted by the Trial Judge to the Jury.

THE FACTS

The defendants maintained at the trial that the conspiracy in the case at bar as attempted to be proven was one existing in the Dominion of Canada, or at all events beyond the territorial limits of the United States, with overt acts committed in the Northern District of California, the district of trial of the defendants; that if such be the conspiracy, the venue thereof was not properly laid in the district of trial and did not exist in any district of the United States. The defendants moved to direct a verdict upon this ground which motion was denied. (R. 318, 319.) This action of the Court was made the subject of Assignment of Error No. 95. (R. 740.) The Circuit Court of Appeals sustained the action of the District Court. (R. 847.)

ARGUMENT

1. The Offense as Developed by the Proof of the Government and Submitted to the Jury Consisted of a Conspiracy Entered Into In Canada and Overt Acts In Furtherance Thereof In San Francisco Bay.

To determine the conspiracy in the case at bar from the record, it is important for the court to note the activities of defendants in the Bay of San Fran-

cisco and the *time* of their occurrence. These defendants naturally group themselves into five separate parts, each group being unconnected, either in participation or knowledge, with the other:

1. *Magruder* and *Clance*—Operators of motor boat, *Viz-4*, employed by one Sam Terry, took liquor from *Qadra* sometime between September 20 and 24. (R. 203.) McLennon Diary shows September 31 (R. 168).

2. *Sam Crivello*—Vague in his statement as to time. Claimed to have been sent by Belanger to *Quadra* with bags and to have been sent by Quartararo to get cargo from *Quadra* and *Malahat*. (R. 216-235.) McLennon first shows Sam Crivello booked the *Quadra* on September 26. (R. 169.) *Marino Crivello* claims to have been employed by Belanger pursuant to introduction by Quartararo to transfer cargo of *Malahat* to *Quadra* and bring liquor from *Malahat*. (R. 253-256.) Witness unreliable as to time, but claims he went out immediately on employment. McLennon Diary shows Marino Crivello boat *Marconi* present on September 22. (R. 169.)

3. *Allen and Nielson*—Convicted herein. Brought liquor from the *Quadra* into San Francisco on motor boat *903-B* in October, 1924.

4. *Mackenzie and Pensotti*—Convicted herein. Operated boat *C-55* with liquor aboard alongside of *Quadra* at time of seizure.

5. *Unknown Conspirators*—Operators of following motor boats indicated to have been alongside of *Quadra*:

September 20—*C-731*.
September 26—*Pilgrim*.
September 27—*Charles Truelson* and *No. 3682*.
October 7—*C-808* and *Ocean Queen* (R. 167, et seq.).

Motor Boat *Florence* (R. 228).

In addition to the defendants represented in the foregoing groups, the remainder may be divided into two classes:

6. The officers and members of the crew of the *Quadra*, twenty-three in number.

7. Defendants who were directors, or rather whose names are identical with the directors of the Consolidated Exporters Company, consignor of the cargo, and Canadian-Mexican Shipping Company, owner of the ship *Quadra*, about fifteen in number.

At the trial, no evidence was offered to show that the wholesale activity in and beyond the Bay of San Francisco was the result of *any* common design, combination, or conspiracy unless the facts referred to immediately below constituted the conspiracy in which these apparently unrelated groups of defendants were engaged: Evidence of the following facts as offered and admitted over objection against all defendants: That the Consolidated Exporters Company and the Canadian-Mexican Shipping Company were incorporated more than a year prior to the presence of the *Quadra* off the coast of California; that certain persons were the directors of said corporations in the year 1924; that the *Quadra* was loaded with liquor in Vancouver in September, 1924, and left there on September 10, 1924; that its cargo was destined according to various shipping articles executed in Vancouver prior to departure for La Libertad; that the members of the crew of the *Quadra* performed acts of transfer and sacking of cargo en route to California, and that it arrived off the coast of California around September 15, 1924.

The first overt act alleged in the indictment begins as follows: (R. 13)

> "Said defendants, and each of them, did at Vancouver, B. C., in the month of September, 1924, cause the steamer Quadra to be loaded with * * * intoxicating liquor, and did cause said steamer Quadra * * * to leave said port of Vancouver, B. C., and proceed to a point opposite and within a distance of less than twelve miles from said Farallone Islands * * *"

Elsewhere in said indictment it is alleged:

> "That said conspiracy * * * was continuously * * * and particularly at the time and times of the commission and consummation of each and all of the overt acts in this indictment set forth and up to and including the time of filing of this indictment in existence and process of execution."

Therefore the preliminary preparations of the *Quadra* and its departure from Vancouver laden with liquor with the point of destination claimed to be false constitute, we believe, the only facts which remotely tend to show or from which, an inference can be drawn, that a conspiracy existed pursuant to which all acts of all defendants were done. All the acts appertaining to the formation of the conspiracy and all of the persons concerned therein were in the Dominion of Canada or on the high seas and at all events beyond the territorial limits of the United States.

The record further discloses that the trial court assumed jurisdiction upon the theory that regardless of

the place of formation of the conspiracy the overt act gave jurisdiction to the district where the overt act was committed. The trial judge said in substance in this regard as follows:

> "These defendants, moreover, are charged with conspiracy. Conspiracy may be tried in the place where the conspirators agreed to the wrongful act, which is the object of the conspiracy; or in any jurisdiction where one of the overt acts is committed. Rex. vs. Brisac, 4 East. 164. And is again settled by this case of Latham vs. United States." (R. 57).

Further, the trial court in instructing the jury, instructed as follows:

> "The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various (483) vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.
>
> "It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the Coast of

California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

"It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

"Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment." (R. 601).

The trial court further instructed as follows:

"Now first, Gentlemen, as to the captain of the ship 'Quadra'; If you find from the evidence, Gentlemen, that Captain Ford took command of the steamer 'Quadra,' loaded her with intoxicating liquor, sailed her to the neighborhood of our shore and there proceeded to cause the liquor to be disembarked from her hold into the small vessels and brought to the coast of California, and if you find at the same time that he did that in conjunction with or in understanding with any person whomsoever then you must find him guilty of the crime as charged." (R. 603).

To the giving of both of these instructions, exception was taken (R. 611 and 612).

The record therefore shows that the crime which the Government attempted to prove at the trial which

the trial judge submitted to the jury consisted of a conspiracy formed in Canada and followed by overt acts committed in the Bay of San Francisco. The record further shows that the trial court ruled as a matter of law that it had jurisdiction to try such an offense.

2. The Circuit Court of Appeals Sustained the Jurisdiction of the District Court by Basing It Upon a Different Conspiracy from That Proved by the Government or Stated by the Trial Court and Upon One Not Supported by the Record.

When the case came before the Circuit Court of Appeals, that court said:

> "The question of venue is less readily answered. It was incumbent on the Government to prove that these plaintiffs in error were parties to a crime committed in the northern district of California * * *" (R. 847).

The Circuit Court of Appeals was apparently unwilling to assume the extreme legal position adopted by the District Court. It did not rule as a matter of law that the District Court had jurisdiction over a crime consisting of a conspiracy formed in Canada and an overt act committed in the Bay of San Francisco. The Circuit Court of Appeals undertook to select a different conspiracy from the one proved by the Government and submitted to the jury by the trial court and to state that the crime for which these defendants were convicted consisted of this other and different conspiracy and the overt acts committed in the Bay of San Francisco. The conspiracy as stated by the Circuit Court of Appeals is as follows:

> "On the entire case the conclusion is warranted that about the 1st of May, 1924, Quartararo and Sam Crivello, within the Northern District of California, conspired to import and possess liquor; that Belanger and his corporation either had an understanding with Quartararo at that time or shortly thereafter became parties to the conspiracy; and that the departure of the Quadra with her cargo from Vancouver on the 9th of September, was pursuant to the same conspiracy." (R. 849.)

It is apparent therefore: *first*, that the conspiracy as stated by the Circuit Court of Appeals was entirely different from that stated by the District Court and upon which these defendants were convicted; *second*, the conspiracy as found by the Circuit Court of Appeals is based upon the transactions arising out of the so-called "Norburn incident" discussed on pages 112 to 121 of the defendants' brief, and which were not shown to be connected in any manner with any of the other transactions put in evidence by the Government; *third*, that if the conspiracy referred to by the Circuit Court of Appeals between Quartararo and Sam Crivello within the northern district of California was the conspiracy for which these defendants were tried, then all the evidence relating to the formation of the corporations in Canada, the loading and departure of the *Quadra*, the diary of one of the seamen on the *Quadra*, the activity of the operators of motor boats not shown to be connected with Quartararo, Crivello, or Belanger, were wholly irrelevant, immaterial, and inadmissible.

We therefore submit that there is nothing whatever in the record to support the position of the Circuit Court of Appeals that these defendants were tried and

convicted of the conspiracy as stated by that court, and that there is no escape from the conclusion reached by the District Court that these defendants were tried and convicted of a crime which consisted of a conspiracy formed in Canada and completed, if it could be completed, by overt acts committed in the Bay of San Francisco. The correctness, therefore, of the position of the District Court on the proposition of law that venue was properly laid in that court for the trial of such an offense is squarely raised and has been amply reserved by the motions for a directed verdict, for the motion in arrest of judgment, the exceptions to the instructions of the trial court and the assignments of error based thereon. So far as the Circuit Court of Appeals found that the question of venue was not properly raised by the exceptions to the trial judge's charge, it would seem that the court was clearly in error. The trial judge, being fully apprised of the nature of the defendants' objection to his charge by reason of the argument of defendants' counsel on the motion for a directed verdict, interrupted their objection to his charge, stating that he fully understood the nature of such objections (R. 612).

3. The District Court Did Not Have Jurisdiction of the Crime Proved by the Government and Submitted by the Trial Judge to the Jury.

The common law gave no jurisdiction to the District Court to try an offense consisting of a conspiracy formed in Canada and an overt act committed in San Francisco and no statute has conferred this jurisdiction.

The rule of criminal procedure is that one who commits a crime is answerable therfor only in the jurisdiction where the crime is committed, and in all criminal prosecutions, in the absence of statutory provisions to the contrary, the venue must be laid in the county or district of the offense, and must be proven as laid. *Gut vs. Minnesota,* 9 Wall. 35; *McKenna vs. Fisk,* 1 How.. 241; *U. S. vs. Davis,* Fed. Cas. No. 14932.

The common law rule relating to venue is well stated in *16 Corpus Juris,* Sec. 294, p. 195, as follows:

> "It was a rule of the common law that, when an offense was constituted by a series of acts, a part of which were done in one county and a part in another, there could be no prosecution in either, unless so much was done in the one as would constitute a complete offense."

This rule has been changed by statute in England and in the United States.

The pertinent language of the Sixth Amendment is as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and *District wherein the crime shall have been committed,* * * *"

Section 731 of the Revised Statutes (Section 42 of the Judicial Code) provides:

> "When any offense against the United States is begun in one Judicial District and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either Dis-

trict, in the same manner as if it had been actually and wholly committed therein."

The case of *Hyde vs. U. S.;* 225 U. S. 347, (cited by the Circuit Court) involved the question of the right to charge and try a conspiracy in the District of Columbia and give to the Supreme Court of said District jurisdiction where the conspiracy was formed in California and an overt act was committed in Washington, D. C.

Justice McKenna, delivering the opinion of this court after an analysis of the relation of the combination or *conspiracy* and the *overt act* to the crime defined by the conspiracy statute, sustained the jurisdiction of the District of Columbia Court primarily on the theory that a conspiracy came within the meaning of Sec. 731. Therein the learned Justice declared:—

> "If the unlawful combination and the overt act constitutes the offense, as stated in Hyde vs. Shine, marking its beginning and its execution or a step to its execution, Sec. 731 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 585) must be applied. That section provides that 'when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.' This provision takes an emphasis of signification from the fact that it was originally a part of the same section of the statute which defined conspiracy—that is, Sec. 30 of the act of March 2, 1867, 14 Stat. 484, 169."

In the *Hyde* case we find a vigorous dissent by Justice Holmes, concurred in by Justices Lurton, Hughes and Lamar. Therein Justice Holmes declared:

> "The cases in this court have agreed that the statute has not made the overt act a part of the crime, which still remains the conspiracy alone. By the same reasoning the overt act gives no ground for the application of Rev. Stat. Sec. 731, creating a double jurisdiction when an offense against the United States is begun in one district and completed in another. The act is no part of the conspiracy even if it is an element in some other crime, as is stated in so many words in *Hyde v. Shine*, 199 U. S. 62, 76; quoting the well known statement in *United States vs. Britton*, 108 U. S. 199, 204; that the statutory requirement merely affords a locus penitentia."

It is clear, therefore, that the *Hyde* case marked an extension from the rules of law as theretofore understood. This extension consisted in this: That where an offense consisted of a conspiracy in one district of the United States and an overt act in another district, venue might be laid either in the district of the conspiracy or in the District of the overt act, whether or not all the defendants indicted had been present in the district of the indictment. The *Hyde* case did not decide that where a conspiracy had been entered into beyond the jurisdiction of the United States and an overt act committed in any district of the United States, the court of the district where the overt act was committed had jurisdiction, or even that a crime had been committed.

Clearly, the *Hyde* case establishes that both the conspiracy and the overt act are essential elements in the crime denounced by Section 37 of the Criminal Code. This being true, it follows that the crime comes within the letter and spirit of Section 731 of the Revised Statutes. Applying the same principle to this case, the conspiracy here does not come within the letter or the spirit of Section 731 of the Revised Statutes.

In short, a District Court of the United States would have jurisdiction of the crime of conspiracy in either one of two cases: First, where both the conspiracy and the act occurred within its district; second, where the conspiracy occurred in one district and the overt act occurred in another and the court had jurisdiction over either district. Clearly, in the present case neither of these situations exists. Upon the case as submitted to the jury, the conspiracy was clearly entered into in Canada. Therefore, the northern district of California was not the district in which both the conspiracy and the act occurred. Similarly the northern district of California was not the district in which a crime begun in some other district of the United States was completed, since the conspiracy was not begun in any other district of the United States, but in a foreign country. It therefore seems inescapable that the District Court had no jurisdiction over the crime as developed by the testimony of the Government, as outlined by the trial judge, and as submitted to the jury.

Conclusion.

We therefore respectfully submit that the proof offered by the Government disclosed that no crime had been either committed in the northern district of California or had been begun in some other district of the United States and been completed in the northern district of California; that the trial judge in his rulings of law and charge to the jury recognized this to be the case; and that the trial court erred in holding that venue was properly laid in that court for the trial of an alleged crime consisting of a conspiracy entered into beyond the jurisdiction of the United States, followed by an overt act in furtherance thereof, committed in the northern district of California.

Respectfully submitted,

HAROLD C. FAULKNER,
Attorney for Petitioners.

IN THE

Supreme Court of the United States

October Term, 1956.

George Pope, George Hayes, J. Ewart Viguet, Guardians, Charles H. Richards, Petitioners,

v.

The United States of America, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MEMORANDUM FOR PETITIONERS, BY PERMISSION OF THE COURT.

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Press of Byron S. Adams, Washington, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 312.

GEORGE FORD, GEORGE HARRIS, J. EVELYN VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MEMORANDUM FOR PETITIONERS, BY PERMISSION OF THE COURT.

Neither the *Quadra* nor her crew is shown by this record ever to have come within three miles of the coast of the United States or any of its possessions.

Neither is it by this record shown that either the *Quadra* or her crew at any time unladed any intoxicating liquors within twelve miles of or within one hour's sailing by any vessel from the shores of the United States or its possessions. The conclusion of fact, therefore, at page 11 (see page 13 also) of the Government's brief that "The *Quadra* was loaded with liquor, she was only 5.7 miles out * * * a motor boat *was observed* actually removing liquor from her * * *," in so far as it may convey the impression that she was unlading liquor at a point 5.7 miles out is not supported by the record. The state of facts shown by the record is accurately set forth on pages 4 and 5 of the Government's brief. The testimony of George Harris (R. 339) when read in its entirety shows that what he meant by "outside of the Farallones" referred to the whole distance traversed by the *Quadra* from the 16th of September until the 12th of October (R. 340) and was not related to the point 5.7 miles out from the Farallones. The testimony of Commander Howell (R. 94), the Coast Guard officer who made the seizure, and first "observed" the C-55, that "As I rounded the port side of the *Quadra* I *saw* the motor boat C-55, which is about 45 or 50 feet long and run by a gas-engine. She was steaming from the side of the *Quadra*, headed off-shore, *at a distance from the Quadra of about* 200 *yards,*" completely refutes the statement that the *Quadra* "was observed" unlading liquors into the C-55 at that point. The fact that Commander Howell, the seizing officer, in the sole affidavit before the court on the part of the Government in opposition to the motion to suppress the evidence seized, (R. 42) justified the seizure upon the sole ground "that at said time and said place said motor boat C-55 was *trans-*

porting intoxicating liquor * * and said Steamship *Quadra was transporting intoxicating liquor* * * *," negatives the existence of any evidence of *unlading* from the *Quadra* into the C-55.

This record, therefore, does not show that either the *Quadra* or her crew ever unladed liquor either within the three-mile zone or within the twelve-mile zone or within one hour's sailing by any vessel from the shores of the United States. The record shows that the *Quadra* was seized for "transporting liquors." (R. 40.) Standing between the three-mile and twelve-mile or hour's sailing limit loaded with but not unlading liquors, the *Quadra* violated no law of the United States. Cunard S. S. Co. v. Mellon, 262 U. S. 100. Neither was her cargo "contraband." Lee v. U. S., Vol. 14 (2d) Fed. Rep. 400-405. Nor is there any evidence in this record that at the time and place the *Quadra* was seized, she had "committed, or was committing, or attempting to commit" an offense against the laws of the United States "prohibiting the importation of alcoholic beverages," within Section 2 of the treaty. The point is emphasized not for the purpose of here contending this seizure unlawful, but for the purpose of later herein discussing the application of the treaty.

The seizure was made under the authority of the Treaty with Great Britain of May 22, 1924, the ship and crew brought into the jurisdiction of the United States under authority of said treaty, the United States District Court for the Northern District of California assumed jurisdiction of the case expressly under authority of the treaty, and the Government in this court supports its case under authority of the treaty. Whether, therefore, the seizure was legal or illegal

in the first instance does not relieve the Government from being bound by and it does not disclaim action under the terms of the treaty in justifying the seizure and maintaining the jurisdiction of the court in adjudicating with reference to the ship and the persons of its officers. Such a case done under color of treaty does not come within Ker v. Illinois, 119 U. S. 437. This court in that case at pages 442-443 excluded such a case from its decision, saying:

> "In the case before us, the plea shows, that, although Julian went to Peru with the necessary papers to procure the extradition of Ker under the treaty, those papers remained in his pocket and were never brought to light in Peru; that no steps were taken under them; and that Julian, in seizing upon the person of Ker and carrying him out of the territory of Peru into the United States, did not act nor profess to act under the treaty. In fact, the treaty was not called into operation and was not relied upon, was not made the pretext of arrest, and the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretence of authority under the treaty or from the government of the United States."

The Government having asserted and maintained jurisdiction under, and the seizure and adjudication having been had and made by virtue of the authority of the treaty whether legally exercised or not, the treaty, as stated in United States v. Rauscher, 119 U. S. 415, became the exclusive rule of action in this and such cases. Therein the court said, speaking of the extradition treaty of 1842 and acts supplemental thereto, "These treaties are also supplemented by acts of Congress, and both are in their nature exclusive."

This treaty expressly refers to the National Prohibi-

tion Act as the law the enforcement of which it is calculated to aid. The treaty and the National Prohibition Act, therein expressly referred to and therefore made part thereof, therefore, in such cases became the exclusive rule of action, defining and limiting the rights of all things and persons subject thereof upon the conditions therein stated, limiting and defining the jurisdiction of the courts accordingly.

This treaty under the rule of Head Money cases, 112 U. S. 580, is a self-executing treaty and therefore a part of the municipal law of the United States.

Being a treaty law, its construction under decisions of this court is ruled as follows:

"—treaties, like statutes, must *rest on words*—nothing added thereto, nothing diminishing." Leavenworth, etc.; R. R. Co. v. United States, 92 U. S. 733; "—the enumeration of certain powers with respect to a particular subject-matter *is a negation* of all other analogus powers with respect to the same subject-matters." "—it is manifestly not desirable to extend them *by any implications;* the presumption is that, having expressed the same, we have expressed all the conditions by which they intend to be bound under the instrument." Ex parte McCardle, 7 Wallace 506; "—This court does not possess any treaty-making power. That power belongs by the Constitution to another department of the Government, and to alter, amend, or add to any treaty, *by inserting any clause, whether small or great, important or trivial,* would be, on our part an assertion of power and not an exercise of judicial functions." Judge Story in *The Amiable Isabel,* 6 Wheaton 1. "—It is well settled that in case of a conflict between an act of Congress and a treaty—each being equally the supreme law of the

land—*the one last in date must prevail in the courts.*" Hijo v. United States, 194 U. S. 315-324.

Upon proclamation of this treaty there was completed the three separate and distinct classes of law invoked by the Government in this case: the Customs Laws, the Criminal Code, and the National Prohibition Act, which last, together with the treaty of May 22, 1924 (United States v. Rauscher, 119 U. S. 407), constituted an exclusive code upon the subject-matters therein included. For the enforcement of each of these classes of laws, separate and distinct search and seizare provisions are by law provided. A seizure made under the provisions of one of these classes of law providing for the enforcement thereof is not a legal seizure for the enforcement of another of these classes of law. If the search and seizure provisions of the Tariff Act of 1922, Section 581 exercisable within four leagues from our shore were deemed applicable to the enforcement of the Prohibition laws upon the high seas beyond the three-mile limit there would be no necessity for this treaty providing a method of seizure expressly related to the enforcement of the prohibition laws on the high seas within the same fixed limitations. Nor would it have been necessary for Congress in the National Prohibition Act to have expressly made the search and seizure provisions of the criminal code and other express provisions applicable to such laws. So also with the Internal Revenue laws and their enforcement provisions.

So that evidence procured in this case by the seizure made under and by virtue of the treaty for the enforcement of the Prohibition Laws of the United States is not admissible for the enforcement of the provisions of the Criminal Code of the United States. Evidence

seized therefore from the *Quadra* by virtue of the treaty law was not admissible in a proceeding under the Criminal Code and Sec. 37 thereof. United States v. Sagitand, 2 F. (2nd) 788.

Bearing in mind the aforesaid well-established rules of treaty construction, and the relationship of this treaty law with cognate provisions of our municipal laws, it seems inescapable that the word "vessel" where used in this treaty was intended to include, and includes only, the vessel, *its* boats and equipment for the purposes of the voyage. The legal amplitude of the word as established by this court has heretofore been quoted. Manila Prize Cases, 188 U. S. 254-268.

Invoking another well-established rule of statutory construction, by examination of the statutes *in pari materia,* the same conclusion is reached. Thus, in the earliest Hovering Act of March 2, 1799, (1 Stat. 627) sections 27, 28, and 50 thereof, which later became sections 2867, 2868, 2872, 2873 and 2874 of the Revised Statutes, and still later sections 586 and 587 of the Tariff Act of 1922 (42 Stat. 858, 989) the seizure of "vessels" is provided. In the same statutes at frequent intervals seizure of the "master," and, in instances of "those on board," are provided. Congress, since the foundation of the Government, has been meticulously careful to expressly provide in all of its legislative enactments whenever it intended the master or others on board of a vessel, the seizure of whom was authorized, should also be amenable to the law, to expressly designate not only the particular persons that might be seized but also the punishment that might be inflicted when they were brought into the jurisdiction of the United States.

In the treaty before us the same meticulous care is

exercised. In Section 1 of the treaty Congress speaks of both the "vessel" and "those on board." Thereby it is shown that in this treaty Congress distinguished between the vessel and those on board and that when it intended this law to apply to both it used *words* to express that purpose. Having all of these words and subjects in mind and before them, the pourparlers proceeded to draw Section 2 of the treaty, omitting therefrom the words "those on board." There can be no contention in this status that Congress did not have in mind those on board as well as the vessel, and obviously the omission of the words "those on board" in Section 2 was industriously done. Therefore, to construe Section 2 to include the master and others of those on board, it becomes necessary for us to read into that paragraph, after the word "vessel," the words "and those on board," contrary to the legal force and effect given the word "vessel" by this court, contrary to the manifest purposes of the makers of this treaty, and contrary to the legislative means employed by Congress in all statutes *in pari materia* for all time to and including the legislative enactment of this treaty law.

When we turn to Article IV of the treaty, we find another legislative interpretation of the word "vessel" herein employed and particularly that in section 2 of Article II it was not intended to conclude those on board, for in said Article IV the right of recovery for loss suffered by improper or unreasonable exercise of the rights conferred by Article II of the treaty is confined solely to the "British vessel." It will hardly be contended that the right of recovery given a vessel may be held to include those on board of the vessel which may or may not be confined to the officers or

crew of the vessel. Can it for a minute be assumed and decreed that the British pourparlers were willing to have compensation renderd to the vessel and not to its subjects? Were the subjects intended to be included in Section 2 of Article II and be placed upon trial and suffer injury and loss without damages for a wrongful seizure while being awarded the vessel only?

It is claimed by the Government that reading the word "vessel", as first appearing in said sub-section, in connection with the later words "for adjudication," by implication includes those on board. It is respectfully submitted that under the decisions of this court in the interpretation of treaties no implications may be indulged to include within the terms of the treaty things not within its express language and words. Citations, *supra.* Moreover, reading the word "vessel" and said phrase together does not by express words or implication include those on board. It is perfectly consistent that the vessel, including the crew, which must be necessarily brought in with the vessel, might be brought in for adjudication as to the vessel alone. That this necessarily includes the cargo, and no provision is made by the treaty for the disposition of the cargo, does not militate against the court according the words in this treaty their legal signification without including therewith by implication other matters. It is the duty of the officers and crew under its articles to stay with the vessel. It is for the interests of the United States Government in seizing these vessels that the crews remain upon them, to care for the cargo and the vessel while being detained, and in case of release to return it to the point whereat it was seized and to continue thereupon in accordance with their articles of employment. That said section does

not include the cargo within the term "vessel" is also obvious, unless we include the same by implication. The fact that the disposition of the cargo is not provided by the treaty militates not against the application of the well-established rules of treaty construction to the words found therein.

The cargo, in case it is not included within the term "vessel," would necessarily be brought in with the vessel, be cared for by the officers and crew during the pendency of proceedings for adjudication of the vessel and thereafter be taken out by the vessel, if forfeiture is denied. Or if forfeiture is decreed, be placed in bond subject to the assertion of any rights of the owners thereto or other disposition in accordance with the law. Omissions from this treaty of provisions aidful in the solution of incidental situations should not be held to militate against the application thereto of the well settled rules of statutory construction applied to the words of the treaty, without adding thereto by reading into the treaty words not there or by implication.

Assuming, however, that sub-division 2 of Article II may be construed as referring to and including those on board, another insuperable objection is presented by this record in that those on board were not when brought in to the jurisdiction of the court "adjudicated" in accordance with the laws "prohibiting the importation of alcoholic beverages." The only law upon our statute books "prohibiting the importation of alcoholic beverages" is the National Prohibition Act. It is not an "adjudication in accordance with" the laws of the United States "prohibiting the importation of alcoholic beverages" by adjudicating in accordance with the conspiracy laws, Section 37, of the

Criminal Code. To hold that the words quoted would include Section 37 of the Criminal Code is to read into this treaty express words so effective. The treaty speaks of a single class of laws expressly therein referred to, those "*prohibiting* the importation of alcoholic beverages."

Adjudication, according to the dictionary definitions, means: "Judgment; decree; sentence; the act of giving judgment or pronouncing sentence or a decree; a settlement of judgment; decree or sentence." Kinney's Dictionary and Glossary, "Adjudication." "In accordance with," in its broadest sense, means: "Not repugnant to," "not in conflict with," or "not inconsistent with." This definition is given in City of Norfolk v. Norfolk Landmark Publishing Co., 95 Va. 564, in construing the term "in accordance with the constitution and laws of the state."

So that, if the words "adjudication in accordance with" are to be given their legal interpretation or effect, they require that no judgment herein be rendered; that no adjudication herein be had of the vessel inconsistent with that provided in the National Prohibition Act, and, if those on board are included within the purview of sub-Section 2, that no sentence be pronounced upon them inconsistent with or in conflict with those sentences provided for the offenses of which the particular defendants are charged by virtue of the terms of the National Prohibition Act.

Conceding for the purposes of argument that the treaty provision in its strict application requires only that any statute which provides different or greater sentences is without the treaty and confining the objection to the fact that the sentences imposed in the particular cases are greater than those provided in the

National Prohibition Act, it will be found that the sentences imposed upon Ford, Harris and Evelyn, as master and officers of the vessel *Quadra* are in some instances four times as great as those provided by the prohibition laws and in all instances much greater than the same. (National Prohibition Act, Section 29. (41 Stats. 316.)

The enforcement of our National Prohibition Act under this treaty does not call for proceedings so entirely in violation of the terms of this treaty. There is in the record in this case a reference to another indictment of these defendants pending in the same United States District Court. That indictment is a published record and may be with propriety referred to here as an indictment of these defendants under the National Prohibition Act. Jurisdiction was secured for the purposes of that indictment by this seizure. If convicted under that indictment, sentence would be administered upon these defendants, if they are included within Section 2, in harmony with the treaty. Obviously, the sentences herein imposed upon them are not in harmony with the treaty. There has not, therefore, been, conceding that the treaty includes those on board, an "adjudication in accordance with" the laws "prohibiting the importation of alcoholic beverages" into the United States. This objection goes to the jurisdiction of the persons of these defendants which not only was excepted to throughout this record but which may at any time and in any court be timely asserted with legal effect.

The gross abuse and breach of our treaty stipulations with Great Britain by applying Section 37 of the Criminal Code in treaty cases of this class is clearly shown by the facts of this case. Hereinbefore we have

shown by this record that neither the vessel nor, if you please, "those on board at the time of seizure, had committed or were committing or attempting to commit an offense against the laws of the United States * * *, its territories or possessions *prohibiting the importation of alcoholic beverages,*" which alone can be done by bringing or attempting to bring or having brought liquors *across and within the three-mile zone limit.* Under the decision of this Court in Cunard S. S. Co. v. Mellon, there can be no violation of Section 3 of the National Prohibition Act "*prohibiting* the importation of alcoholic beverages" save by actually bringing or attempting to bring them across and within the three-mile limit. We, therefore, here have a case wherein, without any violation past or present of the National Prohibition Act, or the laws of the United States prohibiting the importation of alcoholic beverages, or an attempt so to do, the crew of a British ship was seized and brought into the jurisdiction of the United States and adjudicated under the conspiracy statutes of the United States, whereas neither the vessel nor those on board have ever violated or attempted to violate the National Prohibition Act. The situation necessarily results from the different character of crimes denounced by the two Acts, the Conspiracy Statute and the National Prohibition Act. The National Prohibition Act cannot be violated nor can an attempt be made to violate the same save by crossing or attempting to cross into the three-mile limit. The conspiracy statute is complete without consummation of the Criminal Act conspired to be done. Wherefore, it must in cases like this frequently, if not uniformly result, that without any violation whatsoever of the National Prohibition Act as required by the treaty or without any

cause whatsoever for belief that such had been done or was being done or attempting to be done by vessel or crew necessary in order to warrant seizure and give jurisdiction to our courts of the persons so seized under the treaty prosecution be had, guilt may be established and sentence be given under the conspiracy statute. In other words proceeding in such cases under the conspiracy statute may result in sentence for a crime stipulated in the treaty to be in accordance with our prohibition laws when in fact no crime is being, has been, or has been attempted to be committed under the prohibition laws.

We can find no warrant for such an incongruous result in the courts or any reasonable implication attendant upon this treaty if indulged.

Without doubt when the pourparlers sat in conference upon this subject they had before them the National Prohibition Act only; conferred, agreed and stipulated with reference to that alone, and did not have before them or in contemplation the Criminal Code, or Section 37 thereof, imposing sentences many times more severe than those of the act referred to in the treaty.

The treaty presents no objections to the view that all intended thereby is, that if after such an investigation as provided in Section 1 of Article II, there is therefrom found reasonable cause for belief that the *vessel* had committed or was committing or was attempting to commit an offense against the part Prohibition Act of the United States prohibiting importation then the vessel and it alone should be seized as the subject of, and the whole subject of, any and all penalties which thereafter might be adjudicated for an ascertained violation of our laws "prohibiting the im-

portation of alcoholic beverages." The plain, unmistakable meaning of the words and phrases employed in the treaty leads to that and no other conclusion. An Admiralty adjudication as to the vessel alone is intended in case the vessel, a personality, is found on adjudication to have violated laws of the United States "prohibiting the importation of alcoholic beverages." For, in the last analysis, it must be borne in mind that an actual violation, or attempted violation, of the laws prohibiting the importation of alcoholic beverages must be found in order to adjudicate forfeiture of the vessel. The words and language of the treaty sustain no other conclusion unless we read into the treaty other words. While it has been suggested that the visitation of such a penalty alone would not have commensurate effect in putting an end to rum running, nevertheless, it does not seem unreasonable to assume, in the construction of this treaty, that the pourparlers believed that if all rum running vessels were seized and forfeited there would be no violations of our laws prohibiting the importation of alcoholic beverages. There would seem to be no inconsistency in this view wrought by the provisions of Section 1 of Article II. No complete search to ascertain the purposes for which the vessel was being used or about to be used could be had without a search of all those on board including the officers and crew and others. Those on board of such ships ordinarly are agents of the owners of the ships. It is therefore not unreasonable to make the ship liable for their acts in "endeavoring to import or of having imported alcoholic beverages." The most that might be said is that the investigation authorized under Section 1 of the treaty was unrestrictedly thorough. But however that may be,

with all the subjects in mind, the vessel, crew and all others on board, the sole and only ground required for seizure was that the vessel was, had or was attempting to violate our laws prohibiting the importation of alcoholic beverages, that therefore the vessel and that alone should be adjudged in Admiralty, and, if found guilty, forfeited.

This treaty is in all aspects on all fours with the treaty of 1842 between the United States and Great Britain, the subject of decision in United States v. Rauscher, 119 U. S. 407. Nor does it in any material particular differ from the numerous extradition treaties presently in force between the United States and other nations. The most marked difference is immaterial. The treaty of 1842, like most extradition treaties, provided that a magistrate should, upon a prescribed investigation, issue warrant for the turning over of the particular individual that he might be brought into the jurisdiction of the United States for trial for specified offenses. This treaty provides that if a member of the Coast Guard, after prescribed investigations, should have reason to believe that the ship, and for the purposes of this argument, those on board, have been guilty of or had attempted or were attempting certain prescribed offenses, to wit, violating the laws prohibiting the importation of intoxicating liquors into the United States those on board, for purposes of argument, might be seized and brought into the jurisdiction of our courts for trial for the offenses prescribed by that provision of the National Prohibition Act prohibiting the importation of intoxicating liquors into the United States.

These subjects of Great Britain were seized by virtue of that treaty and brought into the jurisdiction

of our courts. They were then under color thereof put upon trial for an offense the punishment of which is much greater than any prescribed for the offense denounced by our prohibition laws. Obviously, from the time of their seizure until now they had no opportunity to return to their native land, for they ever since have been and now are in the custody of the United States, constructive or actual. (Government brief, p. 4.) The cases are exactly parallel. These defendants have been put upon trial for an offense vastly different from any denounced by the prohibition laws of the United States for the illegal acts alleged to have been committed by them providing punishment vastly different from that prescribed by the Criminal Code, Section 37.

Their case is an exact parallel with the United States v. Rauscher.

While it is claimed by the Government that no due exceptions were taken registering this objection at the trial the record contains exceptions by them in the demurrer to the jurisdiction of the court over the persons of these defendants and in the assignments of errors below. Likewise, in the petition for a writ of Certiorari filed in this court, specifying the errors of the Circuit Court of Appeals, the same was and is included. Regardless, however, of whether such objection was taken, the point may be raised at any time. The question is one of jurisdiction of the person. In the United States v. Rauscher, 119 U. S. 407, at page 433, this court, speaking of the identical question, said:

> "Under the views we have taken of the case the jurisdiction of the court to try such an offence, if the party himself was properly within its jurisdiction, is not denied, but the facts relied upon go to show that while the court did have jurisdiction

> to find the indictment, as well as of the questions involved in such indictment, it did not have jurisdiction of the person at that time, so as to subject him to trial. The question therefore is immaterial."

It would not seem improper to call the attention of this Honorable Court to the fact that if the defendants, Ford, Harris and Evelyn, can be brought into the jurisdiction of the United States for trial upon this offense by this treaty, Great Britain here has consented to a treaty whereby her own subjects can be brought into the United States for trial upon offenses never before permitted by any extradition treaty between that and this country. It has never been the policy of Great Britain to permit extradition therefrom for any minor offenses, even of citizens of the United States claiming asylum therein. That she would permit extradition of her own subjects to the United States for trial for these minor offenses when these minor offenses were not offenses under the laws of Great Britain, seems beyond any intention as manifested by the treaties with Great Britain and every nation of the earth from the commencement of time to date.

One of the important issues raised in this case, discussed in the briefs, but very little in the oral arguments, is whether or not a vessel standing beyond the three-mile limit can be held to violate the National Prohibition Act by unloading into boats *not her own,* as distinguished from sending liquors within the jurisdiction of the United States by *her own boats.* (Government brief pages 11-12.) The question is in this proceeding by reason of the fact that it is here determinative of whether or not the "vessel" *Quadra* was "importing or endeavoring to import liquors into the

United States'' within Section 2 of the treaty. It appears without contradiction that the *Quadra* in no instance sent or attempted to send her own boats or any member of her crew across the three-mile limit. The question as raised by the treaty is not whether she thereby violated *some* law of the United States, but whether or not she thereby violated that part of the National Prohibition Act "*prohibiting* the importation of alcoholic beverages," it being legal for her to stand beyond the three-mile limit from our shore laden with intoxicating liquors under the decision of this court in Cunard S. S. Co. v. Mellon, *supra*. The Government contends that the *Quadra* violated the *National Prohibition Act* by unloading into boats other than her own while standing beyond the three-mile limit. Petitioners contend that unless the *Quadra* sent liquor over the three-mile limit into the United States by *her own boats* or by part of her own crew accompanying boats not her own, she did not and does not violate the National Prohibition Act.

Perhaps no question raised by this record is of greater moment in this class of cases today than is this.

In the *Grace and Ruby,* 283 Fed. Rep. 276, the vessel came within the three-mile limit by its own boats and she was held liable to forfeiture. In the *Henry L. Marshall,* 292 Fed. Rep. 489, the vessel did not come within the three-mile limit with its own boats but did with boats other than her own and was held liable to forfeiture. The British Government protested the last decision.

The Government cites the statement by Secretary of State Hughes immediately after the completion of this treaty in support of its position. The statement

does not seem to be intended to declare whether or not the treaty settles this issue. To determine that we must look to the terms of the treaty alone and not to the declaration of any of its pourparlers.

It will be noted that the British Government protested the seizure of the *Henry L. Marshall* under the circumstances thereof, but that the protest was subsequently withdrawn when the *bona fides* of that as a British vessel became apparent. See statement of Secretary Hughes in brief for the petitioners, page 29.

It is respectfully submitted that the employment in the treaty, Section 2, of the word "vessel" alone concluded this question by the treaty *thereby* providing that a vessel sending in cargoes to our shores by boats other than its own did not violate our prohibition laws. Plainly, from the aforesaid statement of Secretary Hughes, the facts of the *Henry L. Marshall* case were before the pourparlers for adjustment. It was, in fact, the principal subject of controversy and difference at their conferences. The employment, however, of the word "vessel" as in the first part of Section 2 of the treaty, as the personality that "has committed or is committing or attempting to commit an offense," includes only the vessel and its own boats and not other boats than those a part of the equipment of the vessel, is well settled by this court, which, in the Manila Prize Cases, 183 U. S. 254-268, thus defines that word:

> "What is included then by the term a 'ship or vessel of war' under section 4635? Whatever the toleration extended in courts of admiralty to the use, in practice, of words apparently superfluous, the word 'ship' embraces *her boats,* tackle, apparel, and appurtenances because part of the ship as a going concern, and, for the same reason,

'ship or vessel of war' include her armament, searchlights, stores, everything, in short, attached to or on board the ship in aid of her operations."

That a "vessel" is not an inanimate thing as set forth in the Government's brief, but a personality capable of *per se* action is succintly set forth in the decision of this court in Tucker v. Alexandroff (183 U. S. 424) at page 438, wherein this court said:

'A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house, subject only to mechanics' liens created by state law and enforcible in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction. She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents. The China, 7 Wall. 53; Thorp v. Hammond, 12 Wall. 408; Workman v. New York City, 179 U. S. 552; The Little Charles, 1 Brock. 347, 354; The John G. Stevens, 170 U. S. 113, 120; Homer Ramsdell & Co. v. Comp. Gen. Trans., 182 U. S. 406. She is capable, too, of committing a tort, and is responsible in damages therefor. She may also become a quasi-bankrupt; may be sold for the payment of her debts, and thereby receive a complete discharge from all prior liens, with liberty to begin a new life, contract further obligations, and perhaps be subjected to a second sale."

The employment of the word "vessel," therefore, as the result of the differences between the pourparlers, which, by its legal interpretation by this court, includes only the vessel and its own boats or equipment for the purposes of the voyage, definitely settles that the United States yielded in this controvrsy to the British contentions which were in accord with international law for more than a century; and, by the treaty confined such offenses to acts of the vessel and its *own boats* and equipment and did not extend it to shore contact by *other* boats.

The fact that the British government has not protested the seizure of British subjects by the United States as claimed by the government does not afford a sound reason from which to conclude that the government deemed them within the terms of the treaty. The protests of the British government set forth in the government's brief (pages 18, 19) do not support that proposition. They requested only expedition of decision. The decision in both of those cases was reversed. No doubt the British government concluded all that was necessary in those cases was to secure decision of the higher courts. So in all other similar cases, as in this, it would seem to be a matter of great delicacy for the British or any other interested government to express its *legal* views concerning a matter pending in our courts. That government probably preferred to await final decision of our highest courts and particularly this Court for an interpretation of the treaty and then to avail itself of the right to propose modifications to meet such decisions as by said treaty, Article V, provided, the proposal of which by the terms of the treaty if not accepted by our government would terminate the same.

The position here taken by petitioners was taken by the British government and acceded to by the United States in reference to the treaty between Great Britain and the United States of May 22, 1924. That treaty provided that in case of blockade runners the "vessel" and "cargo" might be seized and forfeited. It was maintained by the British government in a specified instance that such did not include the officers and crew and they were accordingly released.

Brief for Petitioners pages 48, 49. Moreover, this being a self-executing treaty and, therefore, a municipal law of the United States, petitioners have therein personal rights cognizable by our own courts. The fact that the government of which they are subjects does not protest their cause, does not estop them from asserting their rights under the treaty in our courts and does not change or modify the rules of construction applicable to such treaties in adjudicating their rights.

It is important to note that the contention of the Government that this treaty is intended to extend seizure and adjudication to include the master and crew is negatived by the fact that officers of the United States would thereby be required to elicit and seize evidence from persons thereafter to be used against them in a prosecution under our criminal laws, in violation of the Fifth Amendment to the Constitution, thereby making the method of search provided in section 1 of the treaty fruitless of its purposes. It does not seem reasonable to presume that the treaty provides a means for its own defeat. It does not seem possible that this treaty should be applied by exercising Article I thereof to make the defendants produce evidence against themselves to be used thereafter in our courts for their

prosecution, and, after such conviction as here they be given felony sentences four times as great, in instances, than that stipulated in our agreement with Great Britain for this privilege of their seizure and adjudication.

This vessel, being a British ship, is territory of Great Britain. Thereupon its officers and crew are upon British territory. It is their *home*. Thereupon they dwell and live and perform such duties as are by their articles required. When, therefore, a British vessel is seized under this treaty, the Articles of agreement of the master and crew require that they remain with the vessel to preserve and repair the vessel, man the same, protect its properties, its cargo, and any others and all on board. To leave the same willingly is to desert, punishable by severe penalties. These Articles require that they stay with the ship until its return to the point of departure. It is, therefore, their duty under their articles of employment in case of release of the ship to return it from the point of release to its home. Manifestly the master and crew are in a much better position to do this than others. Manifestly our Government did not contemplate, that in case of release and as is the custom and necessary the return of the ship to the point of seizure, that our Government itself would set the ship and cargo adrift or that it would employ officers and crews therefor but that it should be manned by the master and crew already signed for that purpose, known capable of returning and the only persons legally authorized to return the ship to its point of departure. Our Government is not empowered to do this. The master and crew were under articles of agreement bound to do this. Wherefore, it is apparent that the presence of the crew upon the ship and the *physical* necessity of taking them in when

the ship is seized is no argument that they were intended to be included within the seizure and adjudication. On the contrary, it is for the best interests of all concerned that they remain free to perform and that they do perform their agreed duties at all times, of course, while the ship is in custody, under the surveillance of our Government officials.

That a power, based solely on an implication that the word "vessel" includes the master and crew thereof and other implications herein asserted, is properly exercised to seize the master and crew in their homes on British territory, the ship, throw them into jail and pronounce upon them felony judgments and imprisonment because it might be deemed necessary in efficacious prohibition enforcement, it is confidently asserted will never receive the approval of this Honorable Court.

To sustain its contentions herein, the Government is driven to the necessity of reading into Section 2 of this treaty the words "other persons," of reading out of that section the words "laws" * * * "prohibiting the importation of alcoholic liquors," of reading into the treaty in lieu of the latter phrase the words "Section 37 of the Criminal Code of the United States," contrary to numerous decisions of this court (such as Leavenworth, etc. R. R. Co. v. United States, 92 U. S. 733, stating "Treaties, like statutes, must rest on the *words* used—*nothing* added thereto, *nothing* diminishing"); and, by necessarily invoking *implications* which this court has uniformly held, by reason of a treaty law being an international contract, can not in honor be done. (Leavenworth, etc. R. R. Co. v. United States, 92 U. S. 733: "—it is manifestly

not desirable to extend them" (treaties) "by *any* implications * * *."

In other words the government here relies not upon *this* treaty and its words as written but upon *another* treaty, of different words and phrases, a shadow treaty, uncertain, intangible, unascertainable, and variable according to the caprice of the particular officers executing the same, all of which time and time again has been inhibited by the decisions of this court and which produces results in gross violation of our treaty contract with a great and friendly power without consultation therewith or agreement therefor; whereas, Article VI of the treaty shows it was therein *agreed* that any proposed variations of the treaty as written should only be, as therein provided, after due proposals in writing, consideration thereof by the signatory powers and approval, express or implied.

It is most earnestly and respectfully submitted to this Honorable Court that in interpreting this treaty, whereby a friendly nation has voluntarily sought to aid our country in the execution of a law otherwise difficult if not in this particular impossible of substantial enforcement, and to that end submitted to our officers the right to seize her vessels (necessarily taking therewith her subjects) on the high seas and beyond the jurisdiction of the United States and invested our courts with jurisdiction for the determination of the rights of her subjects, for acts denounced as crimes in the United States but not in Great Britain, that our national honor, trust and confidence bespeak a scrupulous adherence to the words and letter of the grant without reading words into the same nor extending the same by implication contrary to a long line of decisions by this court to effect some supposed pur-

pose not within the words of the treaty as judicially defined by this court. In the view that this treaty, by Article VI thereof, expressly contemplates and provides for possible delinquencies therein or omissions therefrom in the accomplishment of its purpose, and thereby provides a method of swift amendment and modification, it is respectfully submitted to this Honorable Court that the purposes of the treaty will be better subserved by that method of perfection of an obviously presently imperfect agreement and that its purpose will be better subserved by that method, after discussion and agreement by the signatory powers; whereas, any extensions of this treaty by implication or construction without discussion and agreement might result in its revocation and total defeat of its intended purpose.

It is, therefore, respectfully submitted:

(1) That the District Court below did not have jurisdiction of the persons of Ford, Harris and Evelyn either for trial or for the rendition of the sentences shown by this record to have been upon them imposed.

(2) That the evidence seized upon the ship *Quadra* and introduced over the objection of Belanger and Quartararo also, at the trial, was not admissible, for the reason that such evidence seized by virtue of the treaty was admissible solely and only in the trial of the defendants for violations of that portion of the National Prohibition Act prohibiting the importation of alcoholic beverages, and not in a trial for conspiracy, the particular treaty provisions of search and seizure being by the law confined solely and only for adjudications

according to that part of the prohibition laws of the United States, prohibiting the importation of intoxicating liquors.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 1045

GEORGE FORD, GEORGE HARRIS, J. EVELYN, VINCENT Quartararo, and Charles H. Belanger, Petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS OF THE LOWER COURTS

An opinion by the District Court upon the motion to suppress the seized evidence is reported in 3 F. (2d) 343. The opinion of the Circuit Court of Appeals has not yet been officially reported. It will be found, however, on pages 840–867 of the record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 4, 1926 (R. 868–869), and re-

hearing denied February 8, 1926 (R. 869–871). The grounds upon which the petitioners rely for the allowance of a writ of certiorari are set forth on pages 5–8 of their petition. Jurisdiction to issue the writ is conferred upon this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229 (43 Stat. 936, 938).

STATEMENT OF THE CASE

Petitioners were jointly indicted, together with fifty-five others, in the District Court of the United States for the Northern District of California, under Section 37 of the Criminal Code, for having conspired "at the Bay of San Francisco" to violate the National Prohibition Act, the Tariff Act of 1922, and the Treaty with Great Britain of May 22, 1924, by importing, bringing into, selling, and transporting within the United States certain intoxicating liquors for beverage purposes.

As overt acts in furtherance of the alleged conspiracy the indictment charged, among other things, that the defendants on September 10, 1924, caused the Canadian Steamer *Quadra* to leave the port of Vancouver, British Columbia, with a cargo of 12,000 cases of intoxicating liquors and to proceed with her cargo to a point opposite and within twelve miles of the Farallone Islands, which distance it was alleged could be traversed in one hour by said steamer and by motor boat *C–55,* for the purpose of unloading, importing, and bringing said intoxicating liquors into the United States for bev-

erage purposes; that the defendants did then and there, with the unlawful purpose mentioned, unload a portion of the intoxicating liquors from the *Quadra* to the motor boats *903–B, C–55, Marconi, California, Ocean Queen,* and other motor boats to the grand jurors unknown, and that said intoxicating liquors were brought by said motor boats into the United States, in violation of Section 3 of the National Prohibition Act, of Section 593 (4), Subdivision (b), of the Tariff Act of 1922, and of the Treaty with Great Britain of May 22, 1924. (R. 5–18.)

The defendants named in the indictment included George Ford, Master; George Harris, First Officer; and J. Evelyn, Second Officer, of the *Quadra,* as well as certain members of the crew of that vessel; four persons apprehended by Coast Guard officers in motor boats containing intoxicating liquors which were traced to the *Quadra* or to the *Coal Harbour,* another vessel stationed off the coast of California for a similar illegal purpose; one Charles H. Belanger, a director in The Consolidated Exporters, Limited, of Vancouver, which owned the cargo, and one Vincent Quartararo, who was alleged by the Government to have been one of the San Francisco agents of the cargo-owning corporation who handled the liquor as it was landed in the city and who was a party to the system in which clipped one-dollar bills were used, one portion of which, containing a written order upon the master of the *Quadra* to deliver intoxicating liquor, was deliv-

ered to the motor boat in San Francisco, and the other portion conveyed to the master by other means to enable him to verify the orders. (R. 9–11; 90–92.)

The defendants demurred to and filed a motion to quash the indictment, assigning the following principal grounds: (1) That the court had no jurisdiction of the subject matter of the indictment or of the persons of the defendants because all the acts charged in the indictment were alleged to have been committed beyond the territorial limits of the United States; (2) that the Treaty with Great Britain was unlawful because it was in violation of the Eighteenth Amendment, and because His Britannic Majesty was without power to waive thereby the rights of any of his subjects guaranteed to them by Magna Charta or by the basic laws of Great Britain, and (3) that the treaty was void because violative of the laws of the United States and was not part of the laws of the United States. Other grounds raised in the demurrer or in the motion to quash were that the indictment failed to state facts sufficient to charge a conspiracy under Section 37; that the indictment was bad for duplicity, in that it charged a conspiracy to commit three separate offenses "having little or no connection with each other"; that it was bad also for uncertainty in various respects; that it did not apprise the defendants of the charge they were called upon to meet; and that another indictment, No. 15,829, charging the same offenses, was pending against

the defendants, except the defendant Quartararo. (R. 19-28, 28-31.)

Prior to trial the defendants by a "Motion to Exclude and Suppress Evidence" set up that the *Quadra* was a vessel of British registry, not owned in whole or in part by any American citizen, and having a speed of nine miles an hour; that at 11.20 a. m. on October 12, 1924, she was stationed at a point off the Farallone Islands at a greater distance than twelve miles from the coast of the United States, its territories or possessions, and at a greater distance therefrom than could be traversed in one hour by the *Quadra* or by the motor boats *906-B, C-55, Marconi, California,* or *Ocean Queen;* that at such time and place, in violation of the law of nations and of the Treaty with Great Britain, without any violation of the laws of the United States having been committed by any of the crew, and in violation of the defendants' rights guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States, the *Quadra* was seized, in the name of the United States, by a prize crew of the Coast Guard Cutter *Shawnee* and with her cargo and crew taken into the port of San Francisco "as evidence of violations of certain laws of the United States in the indictment on file herein more particularly set forth." The motion further alleged that the United States Attorney and other officers of the Federal Government proposed to use the *Quadra* and her cargo, as well as certain facts relating to

the seizure thereof, as evidence in the case against the defendants, and that such use would violate the defendants' rights as British subjects under the law of nations, the treaty, and the Fourth and Fifth Amendments. (R. 32–38.)

In opposition, Lieutenant Commander C. F. Howell, captain of the Coast Guard Cutter *Shawnee,* filed an affidavit stating that he was in charge of the *Shawnee* at the time and place in question; that at his command the *Quadra* and the motor boat *C–55* were seized and brought into the port of San Francisco and turned over to the Customs Branch of the Treasury Department; that at said time and place the *Quadra* and said motor boat were less than twelve miles from the coast of the United States and at a distance from such coast which could be traversed in less than one hour by the *Quadra* and by motor boat *C–55;* and that at said time and place the *Quadra* and said motor boat were transporting intoxicating liquor. (R. 39–40.) By an order filed January 5, 1925, the court overruled the demurrer, the motion to quash, and the motion to exclude the evidence. (R. 41.) The reasons assigned by the court for this action were stated in an opinion reported in 3 F. (2d) 343. (See also, R. 42–58.)

At the trial, the defendants objected to the introduction of evidence relating to the seizure of the *Quadra* on the ground that such seizure was unlawful because at variance with the Treaty. Stating that the question of the reception or rejection of

evidence was one of law for the court, rather than of fact for the jury (R. 110, 134), the court received considerable evidence concerning the circumstances under which the seizure was made. The Government's evidence on this point was directly contradictory to that of officers of the *Quadra.* For the Government, Captain Howell of the *Shawnee* testified that by means of compass calculations made by him, as well as by soundings made at his direction by Ensign Morse, an officer of his crew, each of said bearings being verified by the other officer, he ascertained the true position of the *Quadra* at the time of the seizure to be 5.7 nautical miles from the most northern of the North Farallone Islands (R. 105–106, 116, 139); that when he first sighted the *Quadra* she appeared to be hove to, but turned and began to move slowly offshore as he bore down on her; that upon his giving four blasts of his whistle as a signal that he wished to speak to her, she stopped; that prior to the seizure as he passed under the stern of the *Quadra* he observed the motor boat *C–55* about two hundred yards distant from that vessel steaming away from her side and headed offshore; that he signaled the motor boat to stop and upon her failing to respond, fired a shot across her bow whereupon she rounded to and came up alongside the *Shawnee;* that the *C–55* was occupied by two of the defendants in the present action and contained a number of filled sacks with the word " Corby " painted upon them,

as well as a partly filled case of beer bottles, and that said motor boat was made fast to the *Shawnee* and the men occupying it placed under arrest and taken aboard that vessel (R. 93–96, 135).

Captain Howell further testified that he thereupon had a conversation with Captain Ford of the *Quadra* (R. 98), in which the latter invited him to go aboard the *Quadra* and check the bearings of that vessel (R. 119–120, 124); that the witness did not see fit to accept that invitation as he was satisfied of his own position and was lying practically alongside of the *Quadra* (R. 124); that the witness informed Captain Ford that the latter was lying too far in and that he, the witness, was going to take him into San Francisco (R. 99); that the witness thereupon sent Ensign Osterman and Boatswain Patterson to examine the papers of the *Quadra,* but that those officers subsequently hailed the witness and told him that Captain Ford refused to exhibit his papers until he had consulted with counsel; that the witness then directed said officers of his crew to take charge of the *Quadra,* and that as Captain Ford refused upon request to steam in, a line was put aboard the *Quadra* and she and her cargo were towed into the port of San Francisco by the *Shawnee* and turned over to the customs officers (R. 101–105).

The testimony of Captain Howell, as above described, was fully corroborated by Ensign Morse of the *Shawnee.* (R. 141–144, 146, 149.) August Anderson, a member of the Coast Guard for over

thirty-two years and having the rank of Chief Boatswain, testified for the Government that on the afternoon of February 17, 1925, he made a test of the speed of the *C–55* by running her several times over a fixed course in San Francisco Bay; that no preparations for the test were made other than boiling the engine and taking water out of the bilges; that at the time of the test the motor boat had no cargo, but had three persons on board, and that the result of the test showed the average speed of the *C–55* to be 6.6 knots an hour. (R. 159–163.) This testimony was admitted over the objection that under the treaty such a test must be made under precisely the same conditions as existed at the time the offense was committed, the District Judge stating that he did not agree at all with the theory of the District Court of Connecticut, which had so held. (R. 162.)

For the defendants, George Harris, first officer of the *Quadra,* testified that a few minutes before the seizure of the *Quadra* he had completed taking the position of that vessel and had found it to be 37: 49½ N., 123: 22½ W. (R. 333), and that the *Quadra* when lying off the Farallones was at no time within twelve miles of any United States possession (R. 348). He frankly admitted that intoxicating liquor was unloaded over the side of the *Quadra* while she was lying outside the Farallones by members of the crew under his supervision, but excused that action on the ground that he was carrying out orders of the master. (R. 339.) J. Evelyn,

second officer, testified that he had made certain observations of the position of the *Quadra* at various times while she was being towed in to San Francisco, which testimony, assuming it to be true, would indicate that the *Quadra* was more than twelve miles out from any shore of the United States at the time of her seizure. (R. 405–406.) Objection was sustained, however, to further testimony by this witness as to his checking up the bearings made by First Officer Harris, on the ground that all he could testify to in this regard was that he saw the calculations made by someone else. (R. 408.) Evelyn also admitted, on direct examination for the defense, that under the direction of Mr. Harris he had supervised the unloading of intoxicating liquors from the *Quadra* to small boats off the Farallones. (R. 412.)

In its charge to the jury the court instructed, among other things, that all the evidence relating to the position of the *Quadra* at the time of the seizure was admitted for the information of the court, in order that it might determine the questions of law whether that evidence was properly admissible and whether the court had jurisdiction of the offense and of the persons of the defendants; that the court had determined those matters and that they were not before the jury at all. (R. 602–603.) The jury returned a verdict finding the petitioners here and five others of the defendants guilty as charged. (R. 74–75.) Following the overruling of motions for a new trial and in arrest of judgment (R. 649),

the court sentenced Ford, Belanger and Quartararo to two years imprisonment in the Penitentiary at Leavenworth, and additionally sentenced Ford to pay a fine of $1,000 and Belanger and Quartararo to pay a fine of $10,000 each. It imposed upon Harris a penitentiary sentence of thirteen months at Leavenworth and upon Evelyn a sentence of eight months in the San Francisco County Jail, without any accompanying fine. The remaining convicted defendants were given jail sentences or fines. (R. 79–81.)

Upon writs of error sued out by the defendants, the Circuit Court of Appeals affirmed the judgment (R. 868–869), holding in part: (1) That there could be no criminal offense in violating the Treaty with Great Britain, but that the reference in the indictment to such violation might be rejected as surplusage and the indictment still state facts sufficient to constitute a crime; (2) that the defendants being in court, the District Court had jurisdiction of them regardless of whether their apprehension had been lawful or otherwise; (3) that the evidence was sufficient to warrant the conclusion that about May 1, 1924, the defendant Quartararo entered into a conspiracy, within the Northern District of California, with the defendant Sam Crivello (who appeared as a witness for the Government) to import and possess intoxicating liquor; that the defendant Belanger and his corporation either had an understanding at that time with Quartararo or shortly thereafter became

parties to the conspiracy, and that the departure of the *Quadra* with her cargo from Vancouver on September 9, 1924, was pursuant to that conspiracy; (4) that a conspiracy may be prosecuted either at the place where it was formed or where an overt act in pursuance thereof is committed; (5) that the question arising during the trial of the position of the *Quadra* at the time of its seizure was a question of the admissibility of evidence and therefore a question of law for the court; (6) that the evidence was conflicting as to the place of seizure, but that as the District Court heard and saw the witnesses the Circuit Court of Appeals could not say on the record before it that the trial court had erred in holding that the defendants had not sustained the burden of proving that the seizure was illegal, and (7) that under the treaty a test of the speed of a communicating vessel need not be under circumstances substantially identical with those existing at the time of the seizure. (R. 840–867.)

Petitioners ask a writ of certiorari to review the judgment of the Circuit Court of Appeals upon the following grounds:

> 1. That evidence relating to the seizure was improperly admitted, because the treaty does not authorize a seizure beyond the three-mile limit for an alleged violation of the conspiracy statute, even though the conspiracy charged may be to violate laws of the United States prohibiting the importation of alcoholic beverages.

2. That under the treaty the speed of the communicating vessel must be determined under conditions substantially similar to those existing at the time of the seizure.

3. That the demurrer to the indictment should have been sustained, because the treaty permits seizures of British vessels only for adjudication of the vessel and does not permit a criminal prosecution of British citizens arrested beyond the territorial waters of the United States.

4. That assuming the treaty permits the criminal prosecution of British subjects on a British vessel seized thereunder, nevertheless the question of whether the seizure was within treaty limits was one of fact for the jury.

5. That irrespective of the treaty, the case involves an important question of criminal law which should be decided by this Court, viz, Whether a conspiracy under Section 37 may be committed by officers of a British vessel outside the territorial limits of the United States.

6. That irrespective of the treaty, the Circuit Court of Appeals has decided an important question of federal law which has not but should be determined by this Court, viz, Whether in view of the requirements of the Sixth Amendment and of Section 731 of the Revised Statutes, permitting the prosecution in either district of an offense begun in one district and completed in another, the instant prosecution could be maintained in the Northern District of California against pe-

titioners Ford, Harris, and Evelyn, when the evidence showed that all the acts committed by said petitioners were committed in Canada or on the high seas without the territorial limits of the United States.

7. That irrespective of the treaty, the Circuit Court of Appeals has decided important questions of general law in a way probably untenable and in conflict with the weight of authority, by affirming the action of the District Court: (*a*) In admitting evidence of another conspiracy between the same parties relating to the landing of liquor from the ship *Norburn*, which was a conspiracy different from that charged in the indictment relating to the *Quadra;* (b) in admitting in evidence certain dollar bills with markings thereon tending to show large purchases of liquor of the defendant Quartararo, in the absence of any evidence connecting such dollar bills with the case on trial, and (*c*) in admitting in evidence a telegram purporting to relate to purchases of liquor by the defendant Belanger, although that telegram was not shown to relate to the conspiracy charged.

ARGUMENT

I

NO SUBSTANTIAL QUESTION REQUIRING A CONSTRUCTION OF THE TREATY IS INVOLVED

(a) The seizure was not made for an alleged violation of the conspiracy statute, but upon grounds obviously authorized by the treaty

Article II, paragraph (1), of the treaty expressly authorizes, first, the boarding of a private vessel

under the British flag by authorities of the United States out of the territorial limits of the United States, its territories, or possessions, in order that inquiries may be addressed to those on board and an examination made of the ship's papers to ascertain whether the vessel, or those on board, are endeavoring to import or have imported alcoholic beverages into the United States, its territories, or possessions, in violation of the laws there in force; and second, a search of the vessel when such inquiries and examination show a reasonable ground for suspicion.

Paragraph (2) provides:

> If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories, or possessions prohibiting the importation of alcholic beverages, the vessel may be seized and taken into a port of the United States, its territories, or possessions for adjudication in accordance with such laws.

Paragraph (3) states, first, that such seizure can take place only within the distance from the coast of the United States, its territories, or possessions, that can be traversed in one hour by the suspected vessel, and then declares:

> In cases, however, in which the liquor is intended to be conveyed to the United States, its territories, or possessions by a vessel other than the one boarded and searched, it

> shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised.

Petitioners' first contention is that the seizure of a British vessel is authorized by the foregoing treaty provisions solely for the purpose of taking such vessel into a port of the United States "for adjudication in accordance with such laws," that is, in accordance with the laws of the United States, its territories, or possessions, prohibiting the importation of alcoholic beverages, and therefore that the treaty did not authorize the seizure of the *Quadra* for an alleged violation of Section 37 of the Criminal Code. In answer to this, it is sufficient to point out that there is nothing in the record upon which to base the assumption that the seizure of the *Quadra* was for a past, present, or intended violation of the conspiracy statute. The treaty does not require the seizing officer to state the grounds upon which he made the seizure, nor were such grounds stated by Captain Howell, other than that the *Quadra* was within treaty limits. At the time of the seizure Captain Howell undoubtedly had reasonable ground for belief that the *Quadra,* or those on board of that vessel, had committed, were committing, or were attempting to commit, a violation of the laws of the United States prohibiting the importation of alcoholic beverages, first, because that vessel attempted to get away when the

Shawnee was observed approaching; second, because of the circumstances under which the communicating motor boat *C–55*, with her cargo of intoxicating liquors were seized, and, third, because of the refusal, contrary to the terms of the treaty, of the master of the British vessel to permit an examination of his ship's papers by officers from the *Shawnee*.

(b) The treaty did not deprive the District Court of jurisdiction of the persons of the defendants or of the offense charged in the indictment

The Government is not attempting here to adjudicate what disposition shall be made of the vessel; the present indictment involves only a criminal charge against the defendants. If, as above stated, the seizure was based upon grounds sanctioned by the treaty, the fact that the officers and crew of the seized vessel accompanied it when it was brought into the port of San Francisco for adjudication under the laws of the United States specified in the treaty, was sufficient to bring those persons within the jurisdiction of the court of that district to answer any indictment which might be filed against them in that court. The treaty in no way restricts the jurisdiction of our courts over the persons of the officers and crews of British vessels. Even if it did and the officers and members of the crew of the *Quadra* who were defendants in this case had been taken into custody in contravention of the treaty, nevertheless those persons being in court to answer the charge there pending against them, the juris-

diction of the court would not be impaired by the manner in which their presence was obtained.

Ker v. *Illinois,* 119 U. S. 436, 444.
Mahon v. *Justice,* 127 U. S. 700, 708–715.
Cook v. *Hart,* 146 U. S. 183, 190.
Adams v. *New York,* 192 U. S. 585, 596.
Pettibone v. *Nichols,* 203 U. S. 192, 212–213.

The District Court also had jurisdiction of the subject matter of the offense charged, first, because the treaty places no restriction upon the jurisdiction of our courts over offenses which do not involve an adjudication of the vessel, and second, because, as pointed out by the Circuit Court of Appeals, *there was evidence sufficient to warrant the finding that the conspiracy charged was formed within the district and that certain overt acts in pursuance thereof were committed within the district.* Upon either of the latter two grounds, the court had jurisdiction of the offense.

Hyde v. *United States,* 225 U. S. 347, 356–367.
Brown v. *Elliott,* 225 U. S. 392, 400.
Lucas v. *United States* (C. C. A., 8th), 275 Fed. 405, 406.
Brolaski v. *United States* (C. C. A., 9th), 279 Fed. 1, 2.
Rudner v. *United States* (C. C. A., 6th), 281 Fed. 516, 519.
Jianole v. *United States* (C. C. A., 8th), 299 Fed. 496, 498.
Latham v. *United States* (C. C. A., 4th), 2 F. (2d) 208, 210.

(c) The question of whether the seizure was within treaty limits was one of fact decided against the defendants by both courts below

If the seizure were unlawful because in contravention of the treaty, there might be merit in petitioners' claim that the admission at the trial of testimony relating to the seizure constituted reversible error, for that testimony undoubtedly had a vital bearing on the question of the defendants' innocence or guilt. But, as above indicated, the seizure was fully sanctioned by the treaty, unless made beyond treaty limits. As to the place where the seizure was made, which was solely a question of fact, both courts below agreed that the testimony on behalf of the United States showing the seizure to have been made 5.7 nautical miles from a coast of the United States, and that in excess of that distance could be traversed in one hour by the communicating motor boat *C–55*, must be accepted as conclusive on that point notwithstanding the contradictory testimony on behalf of the defendants. Manifestly, a claim of error as to a conclusion of fact, in which both courts below joined, affords no basis for the allowance of a writ of certiorari.

(d) The treaty does not require that the speed of the communicating vessel be determined under substantially identical conditions

Regarding the provisions of paragraph (3) of Article II of the treaty, that in cases where it is intended that the liquor shall be conveyed to the United States by a vessel other than the one

boarded and searched, " it shall be the speed of such other vessel " which shall determine the distance from the coast at which the rights conferred by that Article shall be exercised, petitioners urge that the speed of such other vessel must be determined under conditions substantially identical with those existing at the time of the seizure. In support of this assertion they cite the decision of the District Court of the United States for the District of Connecticut in the *Over the Top,* 5 F. (2d) 838, and urge that this diversity of opinion between circuits should be corrected by this Court upon a writ of certiorari granted. But the rule is well settled that the diversity of decision between circuits which will justify the allowance by this Court of a writ of certiorari is a diversity between decisions of circuit courts of appeals and not between a circuit court of appeals and a district court. That the construction of paragraph (3) contended for by petitioners is without merit, is abundantly made clear by the following language of the Circuit Court of Appeals upon this point (R. 854–855):

> We do not find any qualifying words after " vessel " such as " when loaded " or " under conditions of wind and tide prevailing at the time of seizure." We should not read into the treaty limitations which have not been written therein. The Courts of this country should be careful not to fritter away by construction concessions secured by the State Department for the purpose of com-

bating the rum running abuse. The treaty, fairly construed, embodies the consent of Great Britain that her ships may be searched and seized under proper conditions within such a distance from our shores as can be traversed in an hour by any of the boats on which they discharge their liquor. The evidence shows that the *C 55* can traverse 6.6 knots within that time. The *Quadra* was therefore subject to search and seizure if she was within 6.6 miles of the Farallones.

II

CONTENTIONS NOT BASED UPON TREATY

(a) The admission or exclusion of evidence is for the court

Petitioners complain of the refusal of the District Court to submit to the jury the question of whether the *Quadra* was seized within the treaty limits. That question arose upon objection by the defendants, during the trial of the conspiracy charge, to the introduction by the Government of evidence relating to the seizure of that vessel, on the ground that such seizure was illegal because in contravention of the treaty. The District Court ruled that all evidence relating to the seizure was received solely for the information of the court to enable it to determine whether that evidence was admissible. (R. 110, 134, 602–603.) That ruling was affirmed by the Circuit Court of Appeals (R. 854), and was in full accord with the views recently expressed by this Court in *Steele* v. *United States*

No. 2, 267 U. S. 505, which was a prosecution under the National Prohibition Act in which one of the questions raised by the assignments of error was whether the defendant had the right to have submitted to the jury the issue of fact whether there was probable cause for the issuance of a search warrant upon which certain whiskey introduced in evidence by the Government was seized. Holding that there were two answers to this assignment, the first of which was that the question was *res judicata* in view of the finding by the District Court of probable cause for the issuance of the same warrant in a previous proceeding in which the plaintiff in error had petitioned for a return of the seized property, this Court said (p. 511):

> The second answer is that the question of the competency of the evidence of the whiskey by reason of the legality or otherwise of its seizure was a question of fact and law for the court and not for the jury. *Gila Valley Ry. Co.* v. *Hall*, 232 U. S. 94, 103; *Bartlett* v. *Smith*, 11 M. & W. 483; *Doe dem. Jenkins* v. *Davies*, 10 Ad. & El. N. S. 314; 5 Wigmore Evidence (2d. Ed.) Sec. 2550.

(b) Evidence respecting the "Norburn," the marked dollar bills, and the telegram of Belanger

The remaining contentions advanced by petitioners deal with the affirmance by the Circuit Court of Appeals of the action of the District Court in admitting in evidence: (1) Certain testimony for the Government of the defendant Sam Crivello

as to his securing about May 1, 1924, under employment of the defendant Quartararo, a boat load of intoxicating liquor from the steamer *Norburn;* (2) testimony regarding certain one-dollar bills with notations thereon in the handwritng of the defendant Quartararo, and (3) a telegram sent by the defendant Belanger. Relying upon a provision in paragraph 5 (b) of Rule 35, which this Court has stated indicates a ground which will be considered by it in determining whether a writ of certiorari shall issue, petitioners assert that the rulings of the Circuit Court of Appeals referred to constitute decisions of that court upon important questions of general law probably untenable and in conflict with the weight of authority.

As to the *Norburn* testimony, petitioners urge that it concerned a conspiracy which was separate and distinct from the one charged in the present indictment, which related solely to the steamer *Quadra,* and that the testimony of Crivello regarding his trip to the *Norburn* was therefore erroneously admitted by the District Court over the defendants' objection. It is to be noted, however, that the present indictment does not charge a conspiracy confined to the actions of the steamer *Quadra* and those on board of that vessel. On the contrary, the indictment charges that the defendants—

> did * * * on the first day of January, 1924, the real and exact date of which is to

> this grand jury and to these grand jurors unknown, and continuously at all times thereafter up to and including the date of the filing of this indictment, * * * willfully conspire * * * together and with diverse other persons whose names are to these grand jurors and to this grand jury unknown, to commit certain offenses against the United States, that is to say: * * *.

The indictment then charges that the conspiracy was to willfully, feloniously, etc., sell, import, transport, etc., intoxicating liquors within the United States for beverage purposes in violation of the National Prohibition Act, and to willfully and feloniously, etc., import and bring, and to assist in importing and bringing, into the United States merchandise contrary to law in violation of Section 593, Subdivision (b) of the Tariff Act of 1922. The reference to the *Quadra* in the indictment was merely set out as one of several overt acts alleged to have been committed in furtherance of the conspiracy.

The testimony of Sam Crivello, appearing on pages 216–235 of the record, shows that about April or May, 1924, the witness, under employment of the defendant, Quartararo, visited the steamer *Norburn,* outside the Farallones, in the gasoline launch *California* and brought back a boat-load of intoxicating liquor from that steamer which the witness delivered to Quartararo at Oakland Creek, San

Francisco (R. 217–220); that about the same time and under the same employment the witness brought in another boatload of intoxicating liquor from the *Norburn* in the motor boat *Skidaddle*, which motor boat was furnished him by Quartararo; that the witness made another similar trip and delivery about the middle or the last of May, at which time, however, he used the *California* (R. 231); that beginning with the first of August, 1924, the witness made approximately eight trips in the *California* out to the steamer *Malahat* and brought in about 800 to 1,000 cases of intoxicating liquor each trip and delivered said liquor at Oakland Creek in the presence of Quartararo, who paid his wages (R. 226–230); that in the early part of September, 1924, the witness made another trip in the *California* out to the *Malahat*, but being unable to fill his order from that vessel, the master of the *Malahat* gave him an order on the master of the *Quadra* for intoxicating liquors to complete his order and that upon presentation of said order he received from the *Quadra* 49 to 50 cases of such liquor, whereupon he proceeded with his full load to Oakland Creek and delivered it to Quartararo (R. 226–227); that he was introduced at Quartararo's place of business to one "C. H.," whom the witness pointed out in the court room as the defendant Belanger; and that at Belanger's request the witness took some empty sacks out to the *Quadra* (R. 227–228). In

view of this evidence it is clear that the Circuit Court of Appeals committed no error in holding that the testimony regarding Crivello's first trip to the *Norburn* was admissible as tending to show a conspiracy to import intoxicating liquors for beverage purposes in which Belanger and his corporation were original parties or to which they and the crew of the *Quadra* subsequently adhered.

Regarding the marked dollar bills, there was testimony on behalf of the Government by A. F. Pearson, chief teller of the Bank of Italy at San Francisco, that in November, 1924, he had a conversation at that bank with the defendant Quartararo with reference to the redemption of some one-dollar bills; that the witness told Quartararo that if he brought the bills in the witness would tell him whether they could be redeemed; that about two or three days later a man—the witness did not recall whom—brought to the bank some torn dollar bills and left them with the witness; that that afternoon the witness pasted some of the bills together and had another man do the remainder; and that subsequently the bills were turned over by the witness to one Hoskins, a teller of the bank. (R. 240–244.) Hoskins testified that he saw Quartararo in the bank talking to the chief teller but did not overhear the conversation; that the torn dollar bills were first shown to him some time Monday morning, but he didn't know who brought them there; and that

after they were pasted together he took them down to the Federal Reserve Bank which redeemed them for $83.00. (R. 238–240.) The Government thereupon introduced the testimony of several witnesses who identified Quartararo's handwriting upon the signature card of his personal account in the Bank of Italy, upon two checks drawn on that account by Quatararo, and upon Quatararo's affidavit of registration. Photostat copies of these papers were, by leave of court, introduced by the Government as exhibits. (R. 245–251.)

The Government also introduced the testimony of E. A. Heinrich, who, after qualifying as an expert in handwriting, testified that upon a comparison of the aforesaid exhibits with certain marks and writings on the reverse side of the dollar bills (comprising lists of intoxicating liquors, R. 861), it was his opinion that they were in the handwriting of Quartararo (R. 265–278.) There appears to be no other evidence in the record to connect the exhibits with the conspiracy charged, and Circuit Judge McCammant, who wrote the majority opinion of the Circuit Court of Appeals, dissented from the majority on the ground that the introduction of this evidence was prejudicial to Quartararo. (R. 859–862.) But, as above shown, the evidence connecting Quartararo with the conspiracy charged in the indictment was otherwise so abundantly proved that the alleged error complained of, as-

suming that such error existed, could not, in view of Section 269 of the Judicial Code as amended by the Act of February 16, 1919, c. 48 (40 Stat. 1181), be regarded as sufficiently prejudicial to justify a reversal of the conviction of Quartararo.

The Government was permitted, after both sides had rested, to reopen the case for the purpose of introducing the following telegram (R. 863–864):

San Francisco, *June 24/24.*

Geo. Norgan,
Room 1052, Biltmore Hotel,
Los Angeles, Calif.:

Merchandise not yet reached market. Therefore cannot report anything different. Stop. Have appointment with Vince tomorrow, who will make proposition in morning. Things shaping good. Regards.

C. H.

The original of this telegram was in typewriting. The agents of the telegraph company took the name of the sender as "C. H. Belanger, Somerton Hotel," and evidence was received that the defendant Belanger was registered at said hotel on that day. (R. 563–564.) It was the Government's theory that the telegram, which was addressed to a director in the Canadian corporation which owned the liquor cargoes of the *Quadra,* the *Malahat,* and the *Coal Harbour,* was sent by Belanger, that the word "merchandise" meant intoxicating liquor, and that the word "Vince" meant Vincent Quartararo. Counsel for Belanger objected to the introduction of the telegram, and the objection be-

ing overruled, offered proof which did not deny the authenticity of the telegram but tended to show that it did not relate to any liquor transaction. (R. 566–591.) This raised a question for the jury as to the purpose of the telegram, and all the evidence relating to it was submitted to the jury with the other evidence in the case. In passing upon the question of the admissibility of this evidence the Circuit Court of Appeals said (R. 865):

> We think the circumstances were sufficient to constitute a *prima facie* authentication of the wire and that it was properly received.

Petitioners insist that the receipt in evidence of this telegram was improper as being in no way connected with the conspiracy charged. Even upon the assumption that this were so, Belanger's connection with the conspiracy was so clearly shown by other testimony in the record that the alleged error could work no prejudice as to him.

It follows that petitioners' claim that, aside from the treaty questions said to be involved, the case presents important questions of general law decided by the Circuit Court of Appeals contrary to the weight of authority, is without merit.

CONCLUSION

As no substantial question of law requiring a construction of the treaty with Great Britain is involved, and the nontreaty questions presented, whether rightly or wrongly decided, are of insuffi-

cient general importance to warrant the allowance by this Court of a writ of certiorari, it is submitted that the application for the writ should be denied.

Respectfully,

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MARCH, 1926.

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES H. Belanger, and Vincent Quartararo, Petitioners

v.

UNITES STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court (R. 42–58) on a motion to suppress the seized evidence is reported in 3 F. (2d) 643. The opinion of the Circuit Court of Appeals (R. 840–867) is reported in 10 F. (2d) 339.

JURISDICTION

The judgment of the Circuit Court of Appeals, under review, was entered January 4, 1926 (R. 869). The petition for certiorari, filed on March 15, 1926, was granted pursuant to Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936).

THE QUESTIONS PRESENTED

The primary question presented is whether, on the facts disclosed, the officers of the United States were justified, under the terms of the Treaty with Great Britain relating to rum ships, in seizing the British vessel *Quadra,* with her crew and cargo of liquor and in bringing her into port.

Another question is whether a stipulation is implied and must be read into that treaty that only the vessel so seized may be proceeded against, and that her crew or other persons on board are exempt from prosecution and must be allowed to return to the high seas or leave the United States.

Another question is whether persons without the United States, conspiring to violate its laws with those who are within the United States and committing overt acts therein, and who, remaining on the high seas outside of the 3-mile limit, cooperate with their fellow conspirators within that limit in violating the law, pursuant to the conspiracy, commit offenses against our laws for which they may be tried and punished.

Other questions relate to the sufficiency of the indictment and the admissibility of certain evidence.

STATEMENT

The petitioners and 55 others were indicted in November, 1924, for conspiracy to commit offenses against the laws of the United States by introducing into and transporting in the United States liquor

in violation of the National Prohibition Act, and by importing liquor into the United States in violation of Section 593, subdivision (b) of the Tariff Act of 1922, making it a penal offense to introduce merchandise into the United States in violation of law. (R. 5–18.)

Ford, Harris, and Evelyn were, respectively, the master and first and second officers of the *Quadra,* a rum-running vessel of British registry, which was seized and brought into port by revenue officers. Belanger was a director of the Canadian corporation which owned the cargo. Quartararo was the San Francisco agent of the cargo owner. Defendants Sam Crivello and Marino Crivello pleaded guilty. Twenty-nine of the defendants were tried. Nineteen of them were acquitted, and ten, including the five petitioners, were found guilty. (R. 74–75.) The case was tried and the petitioners were convicted on the theory that Quartararo, Belanger, the Crivellos, and others, operating within the United States on behalf of the cargo owner, were working in combination with the officers of the vessel, which remained just outside the 3-mile limit, and with whom they were in direct contact and communication, and caused liquor to be unladen into small boats sent out on behalf of the cargo owner for delivery to the cargo owner on shore. (R. 88–92.) As was said by the Circuit Court of Appeals, "This is not the simple case of the sale and delivery of liquor on the high seas by a foreign vessel." (R. 848.)

On October 12, 1924, the Coast Guard Cutter *Shawnee,* while in neighborhood of the Farallone Islands on the lookout for rum vessels, observed the *Quadra,* a British steamer of Canadian registry, apparently hove to near those islands. As the *Shawnee* bore down on the *Quadra* to investigate, the latter vessel turned and began to move slowly offshore. Captain Howell, of the *Shawnee,* thereupon signaled the *Quadra* to stop, as he wished to speak to her, and she complied. As the *Shawnee* passed under the stern of the *Quadra* the motor boat *C–55* was seen about 200 yards from the *Quadra,* proceeding away from her side and headed offshore. Captain Howell signaled the *C–55* to stop, and, upon her failure to respond, fired a shot across her bow, whereupon she rounded to and came alongside the *Shawnee.* She had two men and a number of sacks of intoxicating liquor, as well as a partly filled case of beer bottles. She was made fast to the *Shawnee* and the two men were placed under arrest. (R. 93–96.) Captain Howell sent two officers on board the *Quadra* to examine her papers. These officers reported that Captain Ford, of the *Quadra,* had refused to show his papers or give any information until he had consulted counsel. The *Quadra,* which had on board a large quantity of intoxicating liquors, was thereupon taken in charge, and upon refusal of Captain Ford to steam in, the *Quadra* was towed into the port of San Francisco and her cargo turned over to customs officers and her officers arrested.

(R. 101–105, 185.) The indictment, filed shortly afterwards, averred that the conspiracy was entered into at the bay of San Francisco by the defendants (R. 11), including four persons who had been apprehended by the Coast Guard officers in motor boats containing intoxicating liquors which had been traced to the *Quadra* or to the *Cold Harbour,* another vessel stationed off the coast of California, for similar illegal purposes. (R. 187, 202–203.)

It was charged, among other things, that the defendants caused the *Quadra* to leave Vancouver with a cargo of 12,000 cases of intoxicating liquor and to proceed to a point near the Farallone Islands for the purpose of unloading and bringing the intoxicating liquors into the United States for beverage purposes and that a portion of them was unloaded to motor boats *903–B, C–55* and other motor boats. (R. 13–14.)

While there was a conflict in the evidence, there was evidence to show, and both lower courts have found, that the *Quadra* when seized was 5.7 nautical miles from the Farallone Islands. The lower courts found (R. 602–603, 855–856), and there was evidence to sustain the finding, that the *C–55,* the motor boat observed conveying liquor from the *Quadra,* could have traversed the distance of 5.7 miles from the *Quadra* to the shore in less than an hour. Subsequent tests of the speed of the *C–55,* made with three men on board, showed a speed of 6.6 knots. (R. 159–163.)

The general scope of the conspiracy and of the transactions in pursuance of it are well set forth in the opinion of the Circuit Court of Appeals. (R. 839–867.) The evidence shows that Quartararo, representing the cargo owners, together with Belanger, a director of the cargo-owning corporation, operated in the Northern District of California and employed Crivello and various motor boats to bring liquor from the *Quadra* and other vessels, the *Malahat* and the *Norburn,* into Oakland Creek, in San Francisco. The liquor from the *Quadra* was not sold to outsiders on the high seas but was delivered to the agents of the cargo owners on shore, through the combined efforts of those on shore and those on the vessels. The *Quadra* and its officers were in constant touch with those on shore and with the other vessels, and operated to some extent under orders and directions from the cargo agents on shore. Sacks as containers for bottled liquor were sent out from shore to the *Malahat* and transferred to the *Quadra.* Belanger gave written orders to transfer liquor from one vessel to another and orders to bring liquor from the vessel's cargo to shore. The delivery of liquor was in fulfillment of orders designated by number and deliveries on shore were made pursuant to prearrangements. (R. 169, 172, 227, 229, 253–256, 339, 412.) The *Quadra* was supplied with oil from the shore, this service being evidently rendered pursuant to prearrangements. (R. 848.)

The *Malahat* left Vancouver in May with a cargo of liquor destined to Buenaventura, Columbia. The *Coal Harbour* left the same port in July with a cargo of liquor destined to La Libertad, San Salvador, and the *Quadra* left Vancouver in September carrying a large cargo of a miscellaneous lot of liquors destined for La Libertad. The shipper of all these cargoes was the Consolidated Exporters Corporation (Ltd.), a Canadian corporation, of which Belanger was one of the directors. (R. 848.) None of these vessels proceeded to their destinations, but went to a point on the high seas off the Golden Gate, where they exchanged liquor with each other and delivered liquor as indicated to the shore.

THE TREATY

The Treaty between the United States and Great Britain, proclaimed May 22, 1924 (43 Stat. 1761), is entitled "Convention between the United States and Great Britain for prevention of smuggling of intoxicating liquors." It recites that the parties are "desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages." Articles I and II are as follows:

ARTICLE I

> The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coastline outwards and measured from low-

water mark constitute the proper limits of territorial waters.

ARTICLE II

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed

in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

SUMMARY OF ARGUMENT

I. The seizure of the *Quadra* was within the terms of the treaty because the circumstances at the time gave reasonable cause for belief that the vessel and those on board had committed or were committing or attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages, and there was evidence to sustain the finding that a boat intended to convey liquor to shore could traverse the distance to shore within an hour and that the seizure was within the limit of distance fixed by the treaty.

II. The treaty contemplates that the vessel, her cargo, and those on board shall be brought into port. When that is done, if it appears that the persons on board have committed an offense, they may be prosecuted therefor. The treaty does not, by its terms, provide that the crew or cargo must be released, and no such stipulation is implied. The implication is to the contrary, and the attempt to

establish an analogy between this case and extradition cases fails. There is nothing in the treaty to sustain the claim that the crew may not be tried for any offense, and the treaty should not be narrowly construed only to permit their trial for violation of the substantive offense of introduction of liquors, but not for conspiracy to do so. The treaty should be construed to carry out its purpose and to relate to violations of law on the subject of alcoholic beverages.

III. Although the officers of the vessel did not physically come within the territorial limits of the United States, they were parties to the conspiracy to commit crime within the United States made by them with those within the United States, and they directly aided, abetted, and combined with those within our jurisdiction in the commission of overt acts within the United States and are therefore subject to trial and punishment under our laws.

IV. The statement in the indictment that the defendants conspired to unlawfully introduce liquor into the United States in violation of the treaty did not render the indictment bad. The treaty does not define or punish crimes, but this statement in the indictment may be treated as surplusage.

V. The objections to the admission of certain evidence are without substance.

ARGUMENT

I

THE SEIZURE OF THE "QUADRA," HER CARGO AND CREW, WAS NOT IN VIOLATION OF THE TREATY

The treaty provides that a seizure of a rum vessel may be made without objection from His Britannic Majesty if two conditions are satisfied. First, there must be reasonable cause for belief that the vessel "has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages"; and second, that the vessel is not at a greater distance from the coast than it can traverse in one hour, or if the liquor is "intended to be conveyed to the United States" by another vessel that the distance can be traversed within an hour by the other vessel. There was ample evidence to sustain the finding of the trial court that the revenue officers had probable cause. The *Quadra* was loaded with liquor, she was only 5.7 miles out, she acted suspiciously, a motor boat was observed actually removing liquor from her, and her master refused to show her papers, circumstances which justified the suspicion that she had committed or was endeavoring to commit offenses against the laws relating to the importation of beverages.

A vessel may commit such an offense by herself coming within the 3-mile limit or she may commit such an offense while remaining outside of the terri-

torial limit by using her own boats, tackle, or crew to transport or unload the liquor within the 3-mile limit, and, although the vessel remains outside the 3-mile limit and does not use her boats, tackle, or crew within that limit, she may participate in an offense against our laws as may an individual by being in direct contact and combination with those on shore and acting, aiding, and abetting those within our limits. *Grace and Ruby,* 283 Fed. 476; *Henry L. Marshall,* 292 Fed. 486.

The contention of the petitioners that a vessel can not commit an offense against our laws if neither she nor her boats, tackle, or crew come within the 3-mile limit is not sustained by the authorities, and the address of Charles E. Hughes, Secretary of State, set forth in the petitioners' brief, says:

> In view, however, of the historic practice of nations in the protection of their territory from the violation of their laws by hovering vessels, the United States Government can not admit that the accepted rules of international law preclude such action as that taken in the circumstances of the *Marshall* case. (Note, p. 30, of petitioners' brief.)

However that may be, the revenue officers who seized the *Quadra* had reasonable ground to believe that she had committed or was attempting to commit an offense against our laws, either by going within the 3-mile limit or sending boats there, or through cooperation and contact with those on shore while remaining outside of that limit.

The second condition of the treaty was satisfied by proof of the speed of the motor boat observed transporting liquor from the *Quadra*. There was ample evidence to sustain the finding that the *Quadra* was only 5.7 miles from the coast. The motor boat, later tested, was shown to have a speed of 6.6 knots. It is contended that this test was insufficient, because the exact conditions existing at the time of the seizure were not shown to exist at the time of the test. The motor boat had two men on board at the time of seizure, and three men when the test was made. She had some bottles of whiskey on board when seized, but none when tested, and it did not appear that exactly the same conditions of wind and weather existed. These criticisms of the proof are captious. The contention that the treaty should be construed to require tests of speed to be rejected as evidence unless made under identical conditions with those existing at the time of seizure should not be sustained. The question is whether under average conditions the boat in question has the required speed.

Since the seizure was lawfully made, the vessel, her cargo, and crew were lawfully brought within the United States and the motion to suppress and exclude the ship's papers and part of her cargo as evidence, on the ground that they had been illegally seized, was properly denied. If the seizure had not been in compliance with the terms of the treaty, it would not follow that the provision against un-

reasonable search and seizure in the Constitution would be applicable and require rejection of the evidence, but since the seizure was manifestly in accordance with the treaty, no consideration of that point is necessary.

II

THE TREATY DOES NOT, BY IMPLICATION, PROHIBIT THE PROSECUTION OF INDIVIDUALS FOUND ON THE SEIZED VESSEL

As we understand it, the petitioners' contention is that the treaty contemplates that the vessel alone shall be brought into port for adjudication, and that there should be read into the treaty, by implication, a provision that the crew or other persons found on her and brought into port with her may not be prosecuted for any offense against our laws. They further contend that if the crew may be prosecuted for some offense, it must be a substantive offense against a law "prohibiting the importation of alcoholic beverages," and that the offense of conspiracy to violate that law is not within the contemplation of the treaty. To support this contention, the attempt is made to establish an analogy between the extradition treaty cases and the case at bar. The rule in the extradition cases is that if a person is surrendered by one country under an extradition treaty, on the representation that he has committed a specific offense and that he is wanted for trial for it, he may not be tried for an offense for which he was not extradited until he has

been given an opportunity to return to the country from which he was taken. *United States* v. *Rauscher,* 119 U. S. 407.

If the petitioners are right in their contention that the seizure was not in pursuance of the treaty, but illegal and wrongful, the case would be controlled by *Ker* v. *Illinois,* 119 U. S. 436, which holds that a person kidnaped and brought within the jurisdiction may be tried, but since we contend that the seizure was lawful and in accordance with the terms of the treaty, the other question must be dealt with.

There is no such reason for reading into this rum treaty an implied agreement not to try the crew of a vessel as there is in extradition cases, such as the *Rauscher* case, for reading into an extradition treaty an implied agreement not to prosecute the one indicted for a different offense from that for which he was extradited. The extradition case involves a misrepresentation and bad faith, which does not exist here.

The treaty is somewhat loosely drawn, but such implications as are to be made are that the crew of a vessel may be prosecuted at least for offenses having to do with the smuggling of intoxicating liquors into the United States. Article II provides that no objection is made to a search of British vessels " for the purpose of ascertaining whether the vessel *or those on board* are endeavoring to import or have imported alcoholic beverages into the

United States * * * in violation of the laws there in force." It refers to offenses by individuals as well as to offenses by the vessel. The vessel is an inanimate object and can not well offend against the law unless some on board of her are doing so.

The next subdivision provides that if the vessel has committed or is committing or is attempting to commit an offense, the vessel may be seized and taken into a port of the United States for adjudication in accordance with its laws. The petitioners contend that this means that only the vessel may be adjudicated, which impliedly excludes the idea that proceedings may be taken against the crew. There is no provision in the treaty for taking the crew or cargo into the United States, and, by the same narrow reasoning applied by the petitioners, only the vessel, her engines, tackle, and equipment may be taken into port and her crew and cargo must be set adrift or thrown overboard. It is obvious that when the treaty says the vessel may be taken into port it means that the vessel, her crew, and her cargo may be taken into port, and when it says that the vessel may be taken into port "for adjudication," it means that the vessel, her cargo, and her crew may be taken into port for adjudication. If the crew may not be proceeded against, neither may the cargo. If British citizens on board are immune, every person on board, including American citizens, would be. There is nothing in the terms of the treaty nor in the principles underlying the

extradition cases that requires the courts to read into this treaty a provision of that kind which the parties did not insert.

The suggestions of the petitioners that diplomatic complications will result from sustaining the Government's position and that the United States by so applying the treaty would be acting in bad faith are unfounded. There is not the slighest ground for the contention that Great Britain has ever suggested or contended that under this treaty the crew of a vessel lawfully seized could not be brought into port, nor tried according to our laws. Diligent as the representatives of that nation have been in guarding the rights of their people under this treaty, such a construction of the treaty has not been advanced. On the contrary, the records of the State Department disclose a practical construction and understanding of the treaty in accordance with our views. There have been many cases where, following seizure of British ships hovering on our coasts, those on board have been indicted and tried for offenses against the laws relating to intoxicating beverages, and the State Department records show that although there have been some differences between the two governments with respect to the application of the treaty in other respects, there has been none on this point. It is sufficient to quote from one document, a communication from the British Embassy to the Secretary of State, dated June 30, 1925, relating to the case of the British schooner *Frances E,* which was

seized off the coast of Alabama, and whose master and crew were arrested and indicted and subsequently tried for conspiracy to smuggle intoxicating liquors into the United States, and which says:

> As you are doubtless aware, the British schooner *Frances E* of Nassau was seized by a United States revenue cutter on April 24th last and was later escorted into the Port of Mobile, Alabama, where her master and crew were arrested and charged with conspiracy to violate the National Prohibition laws.
>
> I am informed that the defendants in this case have now been incarcerated in gaol since April 28th last, and are still awaiting trial and that the long delay, added to their uncertainty as to the future is causing them considerable suffering.
>
> I request therefore that you will move the competent authorities of the United States Government to inquire into this matter with a view to expediting the trial of these British subjects, and I shall be glad to be informed in due course of the result thereof.

A letter of October 4, 1925, on the same subject, says:

> I am instructed by His Majesty's Government to draw your urgent attention to the fact that the master and crew of the *Frances E* have been under detention since April 28th last and that their case is still unsettled. His Majesty's Government are unable to understand the reason of the long delay which has occurred in this matter, and

> I have accordingly the honor to request that you will move the appropriate authorities of the United States Government to expedite a disposition of this case and inform me of the result in due course.

The British Government has urged expedition in the trial of British crews, but has never suggested that they should be treated as immune from prosecution.

Communications have been exchanged between the two governments respecting the case of the *Quadra,* but it has been left to the petitioners to suggest that the crew are immune from prosecution.

A minor contention of the petitioners is that the treaty, if it permits prosecution of the crew at all, confines it to violation of the laws "prohibiting the importation of alcoholic beverages"—that is to say, the substantive offense—and that conspiracy to commit that substantive offense must be excluded. This narrow construction of the treaty should be rejected. One of the communications quoted above assumes a conspiracy charge to be proper. The treaty should be construed in accordance with its purpose.

It was made with a view to preventing smuggling of intoxicating liquors into the United States and to avoid difficulties which might arise between the two governments "in connection with the laws in force in the United States on the subject of alcoholic beverages." Any law which operates to make

the introduction of intoxicating beverages illegal, even though it applies to other articles and does not specifically mention liquor, is within the contemplation of the treaty, and a conspiracy to commit a substantive offense, followed as it must be by overt acts of illegal importation, is fairly within the spirit and purpose of the treaty. It may be contended by the United States, with good ground, that there is nothing in this treaty which impliedly prohibits the United States from prosecuting those on board seized vessels for any crime which it may appear they have committed, whether relating to liquor or not, but it is not necessary in this case to do so.

The question we have discussed is not one of jurisdiction. Petitioners, having been brought into the United States, were within the jurisdiction of the trial court. The question is whether we have a law in the form of a treaty which forbade the trial of the petitioners unless they voluntarily remained in the United States or afterwards came into it under other circumstances. It is not clear that the record raises the point at all. The objections to the indictment could not raise it, and in the lower courts counsel proceeded on the theory that it was a question of jurisdiction, and all his moves to raise that point called for acquittal or verdict of not guilty, which are plainly inappropriate. Neither does it appear clearly from the record that the petitioners had no opportunity to leave the country after they and their vessel were brought

Insert on page 21, Government's brief, No. 312, Ford v. United States, under Point III.

Additional authorities in support of contention of the United States that one outside the jurisdiction may commit a crime within it, some of which deal with conspiracy and some with substantive offenses, are as follows:

Commonwealth v. *Gillespie,* 7 Serg. & Rawle 469.
Lindsey v. *The State,* 38 Ohio State 507.
State v. *Grady,* 34 Conn. 119.
People v. *Werblow,* 241 N. Y. 55.
Weil v. *Black,* 76 West Va. 685.
State v. *Piver,* 74 Wash. 96.
People v. *Ware,* 67 Cal. App. 81.
King v. *Brissac,* 4 East 164.
Hyde v. *United States,* 225 U. S. 347.
Lamar v. *United States,* 240 U. S. 60.

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into port. A statement of the trial judge in his opinion on the motion to suppress the evidence that the crew were arrested and brought into port is the only thing in the record. (R. 43.) As the point is important, even though no exception was properly taken below and no proper assignment of error in the Circuit Court of Appeals was made, this Court may, and probably should, decide it.

III

THE OFFICERS OF THE VESSEL, ALTHOUGH NOT PHYSICALLY WITHIN THE TERRITORIAL LIMITS OF THE UNITED STATES, COMMITTED A CRIME AGAINST ITS LAWS

One personally outside of the jurisdiction may commit a crime within it. *United States* v. *Davis*, 2 Sumner 482; *In re Palliser*, 136 U. S. 257; *Horner* v. *United States*, 143 U. S. 207; *Benson* v. *Henkel*, 198 U. S. 1; *Commonwealth* v. *Macloon*, 101 Mass. 1; *People* v. *Adams*, 3 Denio 190; *McLoughlin* v. *Raphael Tuck Co.*, 191 U. S. 267. In *Reg* v. *Garrett*, 1 Dearsly 232, Lord Campbell said:

> If a man employ a conscious or unconscious agent in this country, he may be amenable to the laws of England, although at the time he was living beyond the jurisdiction.

See *Latham* v. *United States*, 2 F. (2d) 208; *United States* v. *Craig*, 28 Fed. 795; *Burton* v. *United States*, 202 U. S. 344; *Strassheim* v. *Daily*, 221 U. S. 280; *Dealy* v. *United States*, 152 U. S. 539.

The evidence shows that the officers of the vessel while on the high seas near our coast conspired, combined, and confederated with those on shore to unlawfully introduce intoxicating liquors into the United States. Those conspirators on shore committed overt acts within the limits of the United States in pursuance of the conspiracy. The officers of the vessel committed overt acts on the high seas immediately outside of our territorial limits. The vessel and her officers actually participated with those on shore in the act of introducing the liquor into the United States. The contention that the officers of the vessel committed no offense because never within the territorial limits is without substance.

IV

THE SUFFICIENCY OF THE INDICTMENT WAS NOT AFFECTED BY THE ALLEGATION THAT THERE WAS A CONSPIRACY TO VIOLATE THE TREATY

The author of the indictment seems to have had the mistaken impression that the treaty attempts to define or punish crimes against the United States, and, in addition to alleging a conspiracy to violate the National Prohibition Act and the Tariff Act, stated that the conspiracy was to violate the treaty. It was not essential that any specific statute be referred to in the indictment. The reference to the treaty was mere surplusage. The indictment stated an offense without that reference, and therefore stated an offense notwithstanding the reference.

V

THE EVIDENCE RESPECTING THE NORBURN, THE MARKED DOLLARS, AND TELEGRAM OF BELANGER WAS PROPERLY RECEIVED

The remaining contentions advanced by petitioners deal with the affirmance by the Circuit Court of Appeals of the action of the District Court in admitting in evidence: (1) Certain testimony for the Government of the defendant Sam Crivello as to his securing about May 1, 1924, under employment of the defendant Quartararo, a boatload of intoxicating liquor from the steamer *Norburn;* (2) testimony regarding certain one-dollar bills with notations thereon in the handwriting of the defendant Quartararo, and (3) a telegram sent by the defendant Belanger.

The "Norburn" incident

As to the *Norburn* testimony, petitioners urge that it concerned a conspiracy which was separate and distinct from the one charged in the present indictment, which related solely to the steamer *Quadra,* and that the testimony of Crivello regarding his trip to the *Norburn* was therefore erroneously admitted by the District Court over the defendants' objection. It is to be noted, however, that the present indictment does not charge a conspiracy confined to the actions of the steamer *Quadra* and those on board that vessel. On the

contrary, the indictment charges (R. 11–13) that the defendants—

> did * * * on the 1st day of January, 1924, the real and exact date of which is to this Grand Jury and these Grand Jurors unknown, and continuously at all the times thereafter up to and including the date of the filing of this indictment, * * * willfully * * * conspire * * * together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, to commit certain offenses against the United States, that is to say: * * *.

The indictment then charges that the conspiracy was to willfully, feloniously, etc., sell, import, transport, etc., intoxicating liquors within the United States for beverage purposes in violation of the National Prohibition Act, and to willfully and feloniously, etc., import and bring, and to assist in importing and bringing, into the United States merchandise contrary to law in violation of Section 593, subdivision (b) of the Tariff Act of 1922, and that the conspiracy had continued down to the time of the filing of the indictment. The references therein to the *Quadra* were merely set out as overt acts alleged to have been committed in furtherance of the conspiracy.

The testimony of Sam Crivello (R. 216–235) shows that about April or May, 1924, the witness, under employment of the defendant Quartararo, visited the steamer *Norburn,* outside the

Farallones, in the gasoline launch *California,* and brought back a boatload of intoxicating liquor from that steamer which the witness delivered to Quartararo at Oakland Creek, San Francisco (R. 217–220); that about the same time and under the same employment the witness brought in another boatload of intoxicating liquor from the *Norburn* in the motor boat *Skidaddle,* which motor boat was furnished him by Quartararo; that the witness made another similar trip and delivery about the middle or the last of May, at which time, however, he used the *California* (R. 231); that beginning with the first of August, 1924, the witness made approximately eight trips in the *California* out to the steamer *Malahat* and brought in about 800 to 1,000 cases of intoxicating liquor each trip and delivered said liquor at Oakland Creek in the presence of Quartararo, who paid his wages (R. 226–230); that in the early part of September, 1924, the witness made another trip in the *California* out to the *Malahat,* but being unable to fill his order from that vessel, the master of the *Malahat* gave him an order on the master of the *Quadra* for intoxicating liquors to complete his order and that upon presentation of said order he received from the *Quadra* 49 to 50 cases of such liquor, whereupon he proceeded with his full load to Oakland Creek and delivered it to Quartararo (R. 226–227); that he was introduced at Quartararo's place of business to one "C. H.," whom the witness pointed out in the court room as the defendant Belanger; and that at

Belanger's request the witness took some empty sacks out to the *Quadra* (R. 227–228). In view of this evidence it is clear that the Circuit Court of Appeals committed no error in holding that the testimony regarding Crivello's first trip to the *Norburn* was admissible as tending to show a conspiracy to import intoxicating liquors for beverage purposes in which Belanger and his corporation were original parties or to which they and the crew of the *Quadra* subsequently adhered.

The marked dollar bills

Regarding the marked dollar bills, there was testimony on behalf of the Government by A. F. Pearson, chief teller of the Bank of Italy at San Francisco, that in November, 1924, he had a conversation at that bank with the defendant Quartararo with reference to the redemption of some one-dollar bills; that the witness told Quartararo that if he brought the bills in the witness would tell him whether they could be redeemed; that about two or three days later a man—the witness did not recall whom—brought to the bank some torn dollar bills and left them with the witness; that that afternoon the witness pasted some of the bills together and had another man do the remainder; and that subsequently the bills were turned over by the witness to one Hoskins, a teller of the bank. (R. 240–244.) Hoskins testified that he saw Quartararo in the bank talking to the chief teller, but did not overhear the conversation; that the torn

dollar bills were first shown to him some time Monday morning, but he didn't know who brought them there; and that after they were pasted together he took them down to the Federal Reserve Bank, which redeemed them for $83.00. (R. 238–240.) The Government thereupon introduced the testimony of several witnesses who identified Quartararo's handwriting upon the signature card of his personal account in the Bank of Italy, upon two checks drawn on that account by Quartararo, and upon Quartararo's affidavit of registration. Photostat copies of these papers were, by leave of court, introduced by the Government as exhibits. (R. 245–251.)

The Government also introduced the testimony of E. O. Heinrich, who, after qualifying as an expert in handwriting, testified that upon a comparison of the aforesaid exhibits with certain marks and writings on the reverse side of the dollar bills (comprising lists of intoxicating liquors, R. 861), it was his opinion that they were in the handwriting of Quartararo (R. 265–278). There appears to be no other evidence in the record to connect the exhibits with the conspiracy charged, and Circuit Judge McCammant, who wrote the majority opinion of the Circuit Court of Appeals, dissented from the majority on the ground that the introduction of this evidence was prejudicial to Quartararo. (R. 859–862.) But, as above shown, the evidence connecting Quartararo with the conspiracy charged in the indictment was otherwise so abundantly

proved that the alleged error complained of, assuming that such error existed, could not, in view of Section 269 of the Judicial Code as amended by the Act of February 26, 1919 (c. 48, 40 Stat. 1181), be regarded as sufficiently prejudicial to justify a reversal of the conviction of Quartararo.

The Belanger telegram

The Government was permitted, after both sides had rested, to reopen the case for the purpose of introducing the following telegram (R. 863–864):

SAN FRANCISCO, *June 24/24.*

GEO. NORGAN,
Room 1052 Biltmore Hotel,
Los Angeles, Calif.:

Merchandise not yet reached market. Therefore can not report anything different. Stop. Have appointment with Vince to-morrow who will make proposition in morning. Things shaping good. Regards.

C. H.

The original of this telegram was in typewriting. The agents of the telegraph company took the name of the sender as "C. H. Belanger, Somerton Hotel," and evidence was received that the defendant Belanger was registered at said hotel on that day. (R. 563–564.) It was the Government's theory that the telegram, which was addressed to a director in the Canadian corporation which owned the liquor cargoes of the *Quadra,* the *Malahat,* and the *Coal Harbour,* was sent by Belanger, that the word "merchandise" meant intoxicating liquor, and that the word "Vince" meant Vincent Quartararo. Counsel

for Belanger objected to the introduction of the telegram, and the objection being overruled, offered proof which did not deny the authenticity of the telegram but tended to show that it did not relate to any liquor transaction. (R. 566–591.) This raised a question for the jury as to the purpose of the telegram, and all the evidence relating to it was submitted to the jury with the other evidence in the case. In passing upon the question of the admissibility of this evidence the Circuit Court of Appeals said (R. 865):

> We think that the circumstances were sufficient to constitute a *prima facie* authentication of the wire and that it was properly received.

Petitioners insist that the receipt in evidence of this telegram was improper as being in no way connected with the conspiracy charged. Even upon the assumption that this were so, Belanger's connection with the conspiracy was so clearly shown by other testimony in the record that the alleged error could work no prejudice as to him.

The judgment below should be affirmed.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
MABEL WALKER WILLEBRANDT,
Assistant Attorney General.
JOHN J. BYRNE,
Attorney.

OCTOBER, 1926.

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Liquor treaty

SUPREME COURT OF THE UNITED STATES.

No. 312.—October Term, 1926.

George Ford, George Harris, J. Evelyn, Charles H. Belanger and Vincent Quartararo, Petitioners, *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

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[April 11, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This is a review by certiorari of the conviction of George Ford, George Harris, J. Evelyn, Charles H. Belanger and Vincent Quartararo, of a conspiracy, contrary to section 37 of the Criminal Code, to violate the National Prohibition Act, Title II, secs. 3 and 29, c. 85, 41 Stat. 305, 308, 316, and the Tariff Act of 1922, sec. 593 (b), c. 356, 42 Stat. 858, 982. The trial and conviction resulted largely from the seizure of the British vessel Quadra, hovering in the high seas off the Farallon Islands, territory of the United States, twenty-five miles west from San Francisco. The ship, her officers, her crew and cargo of liquor were towed into the port of San Francisco. The seizure was made under the authority of the treaty between Great Britain and the United States, proclaimed by the President May 22, 1925, 43 Stat. 1761, as a convention to aid in the prevention of the smuggling of intoxicating liquors into the United States.

The main questions presented are, first, whether the seizure of the vessel was in accordance with the treaty; second, whether the treaty prohibits prosecution of the persons, subjects of Great Britain, on board the seized vessel brought within the jurisdiction of the United States upon the landing of such vessel, for illegal importation of liquor; third, whether the treaty authorizes prosecution of such persons not only for the substantive offense of illegal importation or attempt to import but also for conspiracy to effect it; and, fourth, whether such persons without the United States

conspiring and cooperating to violate its laws with other persons who are within the United States and to commit overt acts therein, can be prosecuted therefor when thereafter found in the United States.

The petitioners and fifty-five others were indicted in November, 1924, for carrying on a continuous conspiracy at the Bay of San Francisco in the jurisdiction of the United States, from January 1, 1924 to November of that year, the date of the indictment, to commit offenses against the laws of the United States, first, by introducing into and transporting in the United States intoxicating liquor in violation of the National Prohibition Act; second, by importing liquor into the United States in violation of section 593, sub-division (b) of the Tariff Act of 1922, making it a penal offense to introduce merchandise into the United States in violation of law; and, third, by violation of the terms of the treaty. It charged as overt acts the loading of 12,000 cases of liquor on the Quadra at Vancouver, British Columbia, her proceeding on September 10, 1924, to a point less than twelve miles from the Farallon Islands, a distance which could be traversed in less than an hour by the Quadra and by the motor boats, the 903 B, C-55, Marconi, California, Ocean Queen and divers others, by which the liquor was then delivered from her and imported into the United States, that on the 29th of September, 1924, the defendants landed from the steamer Quadra a barrel containing 100 gallons of whiskey, and at another time on October 11, 1924, a large variety of alcohol, gin, brandy, whiskey, and vermouth; and that at another time, on October 12th, the day of the seizure, they attempted to land 89 sacks of whiskey, but that two of the defendants who were on the small craft C-55, were arrested and were prevented from carrying out their purpose. Two defendants pleaded guilty. Of twenty-nine defendants tried, nineteen, including all the crew of the Quadra were acquitted, and ten, including the captain and the first and second officers of the Quadra, were convicted. Of these ten, five including the three officers are now before the Court as petitioners. The convictions were affirmed by the Circuit Court of Appeals of the Ninth Circuit. 10 Fed. (2d) 339.

The validity of the indictment is attacked first because it charges that the conspiracy was to violate the treaty although the treaty creates no offense against the law of the United States. This is

true, but that part of the indictment is merely surplusage and may be rejected. *Bailey* v. *United States,* 5 F. (2d) 437; *Remus* v. *United States,* 291 Fed. 501; *United States* v. *Weiss,* 293 Fed. 992, 995; *United States* v. *Drawdy,* 288 Fed. 567, 570. The trial court took this view. But it is contended that this is to amend the indictment and comes within the inhibition of the principle of *Ex parte Bain,* 121 U. S. 1. That decision condemns the striking out of words from an indictment. The action here complained of is merely a judicial holding that a useless averment is innocuous and may be ignored. *Goto* v. *Lane,* 265 U. S. 393, 402; *Salinger* v. *United States,* November 23, 1926. Next it is said that the indictment is bad for duplicity. It charges a continuous conspiracy by the defendants at the Bay of San Francisco between January 1, 1924, and the date of finding the indictment to import into the United States intoxicating liquor in violation of its laws. It mentions two of such laws, and as section 37 of the Criminal Code requires, it describes several overt acts in pursuance of the conspiracy alleged. The charge is unitary in relating to one continuous conspiracy, although in proof of it different circumstances constituting it and overt acts in pursuance of it are disclosed. This does not constitute duplicity. *Frohwerk* v. *United States,* 249 U. S. 204, 210; *Joplin Co.* v. *United States,* 236 U. S. 531, 548.

The case on the evidence made by the Government was as follows:

On October 12, 1924, the United States Coast Guard cutter Shawnee, on the lookout for vessels engaged in the illicit importation into the United States of intoxicating liquor, saw the Quadra, a British steamer of Canadian register, near the Farallon Islands. As the Shawnee bore down on her to investigate, she turned and began to move off shore. The captain of the Shawnee signalled her to stop, and she complied. As the Shawnee approached her, a motor boat, C-55, was seen just after the boat had left the Quadra. The Shawnee captain signalled the boat to stop, and because it did not do so, fired a shot across its bow, whereupon it rounded about and came alongside. It had two men and a number of sacks of intoxicating liquor as well as a partly filled case of beer bottles. It was made fast to the Shawnee and the two men were placed under arrest. The Shawnee captain then sent two officers aboard the Quadra to examine her papers. Ford, her captain, one of the convicted defendants, refused to show his papers or to give any

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information until he had consulted counsel. The Shawnee officers then took charge of her. She was found to contain a large quantity of intoxicating liquor, and on refusal of Ford to take her by steam into San Francisco, the Shawnee towed her to that port and turned her cargo over to the United States customs officers, while her officers and crew, including Ford, were arrested.

The testimony for the Government tended to show that the Quadra when seized was 5.7 nautical miles from the Farallon Islands, and that the motor boat C-55 could have traversed that distance in less than an hour.

The evidence for the Government at the trial further showed there were three vessels, the Quadra, the Malahat, and the Coal Harbour, chartered by a cargo-owning corporation called the Consolidated Exporters Corporation, Limited, of Canada, and loaded at Vancouver, British Columbia, with large cargoes of miscellaneous liquors, that the Malahat left Vancouver in May officially destined to Buenaventura, Colombia, that the Coal Harbour left the same port in July with a similar cargo officially destined to La Libertad, San Salvador, and the Quadra left there in September, officially destined to La Libertad. The captains of these vessels while hovering near the Farallones were constantly in touch with the convicted defendants Quartararo and Belanger at San Francisco, and acted to some extent under their orders and directions. Quartararo was the most active agent of the conspiracy on shore. Belanger was a director of the Canadian corporation above named. He arranged for and had sent from San Francisco to the Malahat burlap containers to be used for landing the bottled liquor, thence to be transferred to the Quadra and also gave the orders to transfer liquor from one vessel to another, and to bring designated liquor from the vessels' cargoes to the shore. The Quadra was supplied with fuel oil from the shore, pursuant to prearrangement. None of the sea-going vessels above named proceeded to their destinations officially described in their ship's papers, but cruised up and down between the Farallones and the Golden Gate where the exchanges of liquor and sacks were made and where the needed oil was delivered and from which the liquor was carried by small boats to a landing place called Oakland Creek in San Francisco. The evidence of the conspiracy, the landing of the liquor and the complicity of the convicted defendants therein was ample and practically undenied.

There was a preliminary motion to exclude and suppress the evidence of the ship and cargo. It was contended that the seizure was unlawful because not within the zone of the high seas prescribed by the treaty, and the officers of the Quadra being prosecuted were protected against its use as evidence against them under the Fourth and Fifth Amendments to the Federal Constitution. The motion was heard by the District Court without a jury and was denied in an opinion reported in 3 Fed. (2d) 643. The evidence of the Government showed that the Quadra was seized at a distance from the Farallon Islands of 5.7 miles, and a test made later of the speed of the motor boat C-55 caught carrying liquor from her showed that it could traverse 6.6 miles in an hour. There was a conflict as to the exact position of the Quadra at the time of the seizure. It was further objected that the speed of the motor boat was not made under the same conditions as those which existed at the time of the seizure.

The question of the evidential weight of the test as well as of all the circumstances was for the judgment of the trial court. As it has been affirmed by the Circuit Court of Appeals, we see no reason to reverse it.

It is objected that the question of the validity of the seizure should have been submitted to the jury. So far as the objection relates to the admission of evidence, it has already been settled by this Court that the question is for the court and not for the jury. *Steele* v. *United States*, 267 U. S. 505, 511; *Gila Valley Railroad Company* v. *Hall*, 232 U. S. 94, 103; *Bartlett* v. *Smith*, 11 M. & W. 483; *Doe dem. Jenkins* v. *Devies*, 10 Ad. & El. N. S. 314; *Cleave* v. *Jones*, 7 Exchequer 421, 425; Wigmore on Evidence, (2nd ed.) vol. V., p. 556, sec. 2550.

It is further objected, however, that the issue as to the place of the seizure, though submitted to and disposed of by the court in respect to the admissibility of evidence, should also have been submitted to the jury on the general issue. The Solicitor General answers, on the authority of *Ker* v. *Illinois*, 119 U. S. 436, that an illegal seizure would not have ousted the jurisdiction of the Court to try the defendants. But the *Ker* case does not apply here. It related to a trial in a state court, and this Court found that the illegal seizure of the defendant therein violated neither the Federal Constitution nor a federal law nor a treaty of the United

States, and so that the validity of their trial after alleged seizure was not a matter of federal cognizance. Here a treaty of the United States is directly involved, and the question is quite different.

But there is a reason why this assignment of error can not prevail. The issue whether the ship was seized within the prescribed limit did not affect the question of the defendants' guilt or innocence. It only affected the right of the court to hold their persons for trial. It was necessarily preliminary to that trial. The proper way of raising the issue of fact of the place of seizure was by a plea to the jurisdiction. A plea to the jurisdiction must precede the plea of not guilty. Such a plea was not filed. The effect of the failure to file it was to waive the question of the jurisdiction of the persons of defendants. *Dowdell* v. *United States,* 221 U. S. 325, 332; *Albrecht* v. *United States,* January 3, 1927; *Gardner* v. *United States,* 5 Indian Territory 150, 156; *Regina* v. *Stone,* 23 Ontario 46, 50; *In re Paul,* 5 Alberta Law 442; *State* v. *Bishop,* 7 Conn. 181; *State* v. *Watson,* 20 R. I. 354; *State* v. *Kinney,* 41 Iowa 424; *In re Roszcynialla,* 99 Wis. 534, 538; *State ex rel. Brown* v. *Fitzgerald,* 51 Minn. 534; *In re Brown,* 62 Kansas 648; *State* v. *Browning,* 70 S. Car. 466; *Hollibaugh* v. *Hehn,* 13 Wyo. 269; *In re Blum,* 9 N. Y. Misc. 571; 1 Bishop Crim. Proc. (2d ed.) sections 730, 744 and 746; 1 Chitty Criminal Law (5th Am. ed.) p. 438. It was not error therefore to refuse to submit to the jury on the trial the issue as to the place of the seizure.

There was a demurrer to the indictment, on the ground that it did not state facts sufficient to constitute an offense against the United States, that the court had no jurisdiction to try those who were on the Quadra because seized beyond the three-mile limit, and that the acts charged were not within the jurisdiction of the court. The conspiracy was laid at the Bay of San Francisco, which was within the jurisdiction of the court. The conspiracy charged was undoubtedly a conspiracy to violate the laws of the United States under section 37 of the Criminal Code. The court had jurisdiction to try the offense charged in the indictment and the defendants were in its jurisdiction because they were actually in its custody.

The defendants contend that on the face of the indictment and the treaty they are made immune from trial. This requires an examination and construction of the treaty.

The preamble of the treaty recites that the two nations being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages have decided to conclude a convention for the purpose. The first four Articles are as follows:

ARTICLE I.

The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coast-line outwards and measured from low-water mark constitute the proper limits of territorial waters.

ARTICLE II.

(1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be instituted.

(2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories or possessions for adjudication in accordance with such laws.

(3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States its territories or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded, which shall determine the distance from the coast at which the right under this article can be exercised.

ARTICLE III.

No penalty or forfeiture under the laws of the United States shall be applicable or attach to alcoholic liquors or to vessels or persons by reason of the carriage of such liquors, when such liquors are listed as sea stores or cargo destined for a port foreign to the

United States, its territories or possessions on board British vessels voyaging to or from ports of the United States, or its territories or possessions or passing through the territorial waters thereof, and such carriage shall be as now provided by law with respect to the transit of such liquors through the Panama Canal, provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories or possessions.

ARTICLE IV.

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article II of this Treaty or on the ground that it has not been given the benefit of Article III shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the Claims Commission established under the provisions of the Agreement for the Settlement of Outstanding Pecuniary Claims signed at Washington the 18th August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

The other two articles relate only to duration and ratification.

The treaty indicates a considerate purpose on the part of Great Britain to discourage her merchant ships from taking part in the illicit importation of liquor into the United States, and the further purpose of securing without objection or seizure the transportation on her vessels, through the waters and in ports of the United States, of sealed sea stores and sealed cargoes of liquor for delivery at other destinations than the United States. The counter-consideration moving to the United States is the enlargement and a definite fixing of the zone of legitimate seizure of British hovering vessels seeking to defeat the laws against importation of liquor into this country from the sea. The treaty did not change the territorial jurisdiction of the United States to try offenses against its importation laws. That remained exactly as it was. If the ship could not have been condemned for such offenses before the treaty, it can not be condemned now. If the persons on board could not have been convicted before the treaty, they can not be

convicted now. The treaty provides for the disposition of the vessel after seizure. It has to be taken into port for adjudication. What is to be adjudicated? The vessel. What does that include? The inference that both ship and those on board are to be subjected to prosecution on incriminating evidence is fully justified by paragraph 1 of Article II in specifically permitting examination of the ship papers and inquiries to those on board to ascertain whether not only the ship but also those on board are endeavoring to import or have imported liquor into the United States. If those on board are to be excluded, then by the same narrow construction the cargo of liquor is to escape adjudication, though it is subject to search as the persons on board are to inquiry into their guilt. It is no straining of the language of the article therefore to interpret the phrase "the vessel may be seized and taken into a port of the United States . . . for adjudication in accordance with such laws", as intending that not only the vessel but that all and everything on board are to be adjudicated. The seizure and the taking into port necessarily include the cargo and persons on board. They can not be set adrift or thrown overboard. They must go with the ship—they are identified with it. Their immunity on the high seas from seizure or being taken into port came from the immunity of the vessel by reason of her British nationality. When the vessel lost this immunity, they lost it too, and when they were brought into a port of the United States and into the jurisdiction of its District Court, they were just as much subject to its adjudication as the ship. If they committed an offense against the United States and its liquor importation laws, they can not escape conviction, unless the treaty affirmatively confers on them immunity from prosecution. There certainly are no express words granting such immunity. Why should it be implied? If it was intended by the parties why should it not have been expressed?

It is urged that the principle of interpretation, *Expressio unius est exclusio alterius,* requires the implication from the reference to the adjudication of the vessel alone. This maxim properly applies only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended

to have opposite and contrary treatment. But here, as we have already pointed out, the obvious and necessary association of the seizure and the taking to port of the cargo and those on board with that of the vessel naturally carries the same association with the step of adjudication. This destroys the idea of contrast so that the inference based on the maxim can not here be drawn. The ship, on the one hand, and those on her and her cargo, on the other, are not in the natural reading of the words set over against each other. The words "for adjudication" are arranged as incidental to the seizure and taking into port in which the persons on board and the cargo must be included. Why then should they be excluded from the last of the three steps described in the disposition of the vessel?

The maxim of interpretation relied on is often helpful but its wise application varies with the circumstances. *United States* v. *Barnes,* 222 U. S. 513, 518-519; *City of New York* v. *Davis,* 7 F. (2d) 566, 575; *Saunders* v. *Evans,* 8 H. L. C. 721, 729; *London Joint Stock Bank* v. *Mayor,* 1 C. P. D. 1, 17; *Colquhoun* v. *Brooks,* 21 Q. B. D. 52, 65. Broom Legal Maxims (7th Ed.), p. 653, says:

"It will, however, be proper to observe, before proceeding to give instances in illustration of the maxim, *Expressio unius est exclusio alterius,* that great caution is requisite in dealing with it for, as Lord Campbell observed in Saunders *v.* Evans, it is not of universal application, but depends upon the intention of the party as discoverable upon the face of the instrument or of the transaction; thus where general words are used in a written instrument, it is necessary, in the first instance, to determine whether those general words are intended to include other matters besides such as are specifically mentioned, or to be referable exclusively to them, in which latter case only can the above maxim be properly applied."

Lord Justice Lopes says of the maxim in *Colquhoun* v. *Brooks, supra:*

"It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice."

What reason could Great Britain have for a stipulation clothing with immunity either contraband liquor which should be condemned or the guilty persons aboard when the very object of the treaty

was to help the United States in its effort to protect itself against such liquor and such persons from invasion by the sea? To give immunity to the cargo and the guilty persons on board would be to clear those whose guilt should condemn the vessel and to restore to them the liquor, and thus release both for another opportunity to flout the laws of a friendly government which it was the purpose of the treaty to discourage. The owner of the vessel would thus alone be subjected to penalty and he would suffer for the primary guilt of the immunized owner of the liquor. Such implication of immunity leads to inconsistency and injustice. The palpable incongruity contended for is such that without express words, we can not attribute to the high contracting parties, intention to bring it about.

Nor have we been advised that Great Britain has ever suggested that under this treaty a crew of a vessel lawfully seized could not be brought into port or tried according to our laws. Diligent as the representatives of that nation have always been in guarding the rights of their people, such a construction of the treaty has not been advanced. It is said by the Solicitor General without contradiction that following a number of seizures by the British ships on our coasts under the treaty, those on board have been indicted and tried for offenses against the laws relating to intoxicating beverages, and that the State Department records show no objection of immunity therefrom to have been claimed for them by the British Government. One instance cited is in respect to the crew of the British schooner Francis E., which was seized off the coast of Alabama, and whose master and crew were arrested and indicted and subsequently tried and convicted for conspiracy to smuggle intoxicating liquors into the United States. Under date of June 30, 1925, pending the trial, the British Embassy communicated to the Secretary of State a complaint as follows:

"As you are doubtless aware, the British schooner Frances E of Nassau was seized by a United States revenue cutter on April 24th last and was later escorted into the port of Mobile, Alabama, where her master and crew were arrested and charged with conspiracy to violate the National Prohibition laws.

"I am informed that the defendants in this case have now been incarcerated in gaol since April 28th last and are still awaiting trial and that the long delay, added to their uncertainty as to the future is causing them considerable suffering."

The request was then made that the trial be expedited, and this was followed by a similar request in October, 1925, but there was no claim that there was any immunity from trial secured by the treaty to those who were brought in on the vessel seized.

The case of the *United States* v. *Rauscher,* 119 U. S. 407, is relied on to establish the immunity contended for in this case. Rauscher was convicted under an indictment in a federal court for cruel and unusual punishment of one of the crew of an American vessel of which Rauscher was an officer. He had been extradited from British territory for murder on the high seas under section 4339 of the Revised Statutes. The question was whether he could be tried in this country for another offense than that for which he was extradited, for an offense for which the treaty granted no right to extradition. The extradition treaty was that of August 9, 1842, between Great Britain and the United States, 8 Stat. 576, in which each country upon mutual requisition of the other, agreed to deliver to justice all persons who, being charged with the crime of murder, or assault, with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, should seek an asylum or should be found, within the territories of the other: provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments were given jurisdiction upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he might be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality might be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it should be the duty of the examining judge or magistrate to certify the same to the proper executive authority that a warrant could issue for the surrender of such fugitive. The Court held that a defendant thus extradited could not be tried for any offense other than the one for which he was extradited. The case was decided at the end of a prolonged controversy between Great Britain and

the United States through their State Departments on the same issue presented in several cases.

The opinion of the Court was delivered by Mr. Justice Miller, and his conclusions were based, first, on the ground that according to the doctrine of publicists and writers on international law, the country receiving the offender against its laws from another country in the absence of treaty has no right to proceed against him for any other offense than that for which he had been delivered up; second, that the enumeration of the offenses in the treaty there involved marked such a clear line in regard to the magnitude and importance of those offenses that it was impossible to give any other interpretation to it than the exclusion of the right of extradition in others; third, the provisions of the treaty giving a party an examination before a judicial tribunal in which before he should be delivered up, the offense for which he was to be extradited must be proven to the satisfaction of the tribunal, left no doubt that the purpose of the treaty was that the person delivered up should be tried for that offense and no other; and fourth, that the provisions of sections 5272 and 5275 of the Revised Statutes required such course in the trial of extradited persons.

This review of the opinion in the *Rauscher* case shows that it affords no support for the implication of immunity of the smugglers or would-be smugglers or the contraband cargo in the case before us. If it were attempted to try the defendants or to forfeit the cargo that was brought into port for smuggling of forbidden opium, a different question might possibly be presented. But here the subjecting of the defendants and the cargo by the seizure of the vessel to the jurisdiction of the courts of the United States is for a conspiracy to do the smuggling of liquor which was the ground for the vessel's seizure. This destroys any real analogy between the *Rauscher* case and this. More than this, the strength of the provisions of the treaty in the *Rauscher* case as detailed in the opinion to establish the sound application of the *exclusio* maxim of interpretation shows how weak by contrast is its application to the circumstances of this case.

It is next objected that the convicted defendants taken from the Quadra were not triable under the indictment, because it charges an offense against them for which under the treaty neither they nor the Quadra could have been seized in the prescribed limit.

It is very doubtful whether the objection was made in time and was not waived by the plea of not guilty; but we shall treat it as having been duly made. The contention of counsel on this point is that the treaty permits seizure only for the substantive offense of importing or attempting to import liquor illegally and not for a conspiracy to do so.

These defendants were indicted under section 37 of the Criminal Code of the United States for having conspired at the Bay of San Francisco to violate the National Prohibition Act and the Tariff Act of 1922. Section 37 of the Criminal Code provides that if two or more persons conspire to commit an offense against the United States, and one or more of such parties commit any act to effect the object of the conspiracy, each shall be punished.

The National Prohibition Act, c. 85, section 3, 41 Stat. 305, 308, enacted October 29, 1919, provides:

"No person shall on or after the date when the 18th Amendment to the Constitution goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

The Tariff Act of September 21, 1922, 42 Stat., c. 356, section 593 (b) provides that if any person fraudulently or knowingly imports or brings into the United States, or assists in doing so, any merchandise contrary to law, he shall be fined or imprisoned. The importation of liquor into the United States is contrary to law, as shown by the Prohibition Act.

The indictment charged as overt acts that the defendants and each of them on the 10th and 29th of September, and October 11th, by small boats from the Quadra landed illegally in San Francisco substantial quantities of liquor, and on the 12th of October, the day of the seizure attempted to land another lot of liquor but were defeated by the seizure.

The preamble of the treaty recites that the two nations being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages, have decided to conclude a convention for the purpose. Paragraph (1) of Article II provides for boarding, examination and search to ascertain whether the

ship or those on board were "endeavoring to import or have imported alcoholic beverages into the United States in violation of the laws there in force." The second paragraph of Article II permits the seizure on belief that "the vessel has committed or is committing or is attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages."

Considering the friendly purpose of both countries in making this treaty, we do not think any narrow construction should be given which would defeat it. The parties were dealing with a situation well understood by both. In effect they wished to enable the United States better to police its seaboard by enabling it within an hour's sail from its coast, beyond its territorial jurisdiction and on the high seas to seize British actual or would-be smugglers of liquor and, if they were caught, to proceed criminally against them as if seized within the three-mile limit for the same offenses in reference to liquor importation. No particular laws by title or date were referred to in the treaty but only the purpose and effect of them. Plainly it was the purpose of the contracting parties that vessels and men who are caught under the treaty and are proven to have violated any laws of the United States, by which the importation of liquor is intended to be stopped through forfeiture or punishment, may be prosecuted after the seizure. The National Prohibition Act expressly punishes the importation of intoxicating liquor. The Tariff Act of 1922 declares it an offense to make any illegal importation and so makes it an offense to import intoxicating liquor. Section 37 of the Criminal Code makes it an offense to conspire to violate the Prohibition Act and the Tariff Act in respect to the importation of liquor, if the conspiracy is accompanied by overt acts in pursuance of it. The conspiracy act is the one most frequently used in the prosecution of liquor importations from the sea, because such smuggling usually necessitates a conspiracy in preparation for the landing. We think that any more limited construction would not satisfy the reasonable expectations of the two parties. Nothing in the words of the treaty make such an interpretation a difficult one. The penalties under each act differ from those under the others. The Tariff Act and the conspiracy section each imposes a maximum penalty of two years, while that of the Prohibition Act is only six months, with a lower maximum of fine.

The differences are clearly not sufficient to affect the construction. The substantive offense of importing liquor is in law a different one from the preparatory offense of conspiring to import liquor; but where, as here, the overt acts of the conspiracy include an actual importation of liquor and an attempt, it would seem to be quite absurd to hold that the conspiracy set forth does not come within the scope of the treaty. This is not a case for keeping within the technical description of a particular offense. It is not a formal extradition treaty where it is necessary in protection of the persons to be extradited and carried from one country to another, that the crime for which they are to be tried, should be described with nicety and precision to permit the operation of the principles recognized and enforced in the *Rauscher* case. Any law, the enforcement of and punishment for which will specifically prevent smuggling of liquor, should be regarded as embraced by the treaty. The British Government has advanced no contrary view. In the letter from the British Embassy of June 30, 1925, already referred to, the fact that the master and crew of the British schooner Francis E. of Nassau were arrested and charged with conspiracy to violate the National Prohibition laws, was not made the basis of complaint or protest but only of a request that the trial be expedited. The error assigned upon this point can not be sustained.

The next objection of the defendants taken from the Quadra is that on all the evidence they were entitled to a directed verdict of not guilty. They argue that they are charged with a conspiracy illegally to import or to attempt to import liquor into the United States when they were corporeally at all times during the alleged conspiracy out of the jurisdiction of the United States and so could commit no offense against it. What they are charged with is conspiring "at the bay of San Francisco" with the defendants Quartararo and Belanger illegally to import liquor and the overt acts of thus smuggling and attempting to smuggle it. The conspiracy was continuously in operation between the defendants in the United States and those on the high seas adjacent thereto, and of the four overt acts committed in pursuance thereof, three were completed and took effect within the United States and the fourth failed of its effect only by reason of the intervention of the federal officers. In other words, the conspiring was directed to violation of the United States law within the United States by men within and without it and everything done was at the procuration and

by the agency of each for the other in pursuance of the conspiracy and the intended illegal importation. In such a case all are guilty of the offense of conspiring to violate the United States law whether they are in or out of the country.

In *Strassheim* v. *Daily*, 221 U. S. 280, Daily had been convicted of procuring Armstrong, a public official of Michigan, to pay bills presented to the State which Armstrong knew to be fraudulent. It was objected that during the whole period of the crime, Daily was in Chicago, Illinois, and could not be punished under an indictment found in Michigan for such an offense. This Court denied the claim, saying (pp. 284, 285):

"If a jury should believe the evidence and find that Daily did the acts that led Armstrong to betray his trust, deceived the Board of Control, and induced by fraud the payment by the State, the usage of the civilized world would warrant Michigan in punishing him, although he never had set foot in the state until after the fraud was complete. Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power. Commonwealth *v.* Smith, 11 Allen 243, 256, 259; Simpson *v.* State, 92 Georgia 41; American Banana Co. *v.* United Fruit Co., 213 U. S. 347, 356; Commonwealth *v.* Mac Loon, 101 Mass. 1, 6, 18. We may assume therefore that Daily is a criminal under the laws of Michigan."

Other cases in this Court which sustain the same view are *Benson* v. *Henkle*, 198 U. S. 1, *Re Palliser*, 136 U. S. 257, *Horner* v. *United States*, 143 U. S. 207, *Burton* v. *United States*, 202 U. S. 344, 387, and *Lamar* v. *United States*, 240 U. S. 60, 65, 66.

There has been much discussion of this general principle, and its application has been varied in some courts because of certain rules of the common law with respect to principals and accessories, but in the consideration of such a case as this, we are not controlled by such considerations and regard the principle as settled as in the passage quoted. It is supported by other authorities: *Commonwealth* v. *Gillespie*, 7 Sargent & Rawle 469, 478; *Rex* v. *Brisac and Scott*, 4 East, 164; *State* v. *Piver*, 74 Washington 96; *Weil* v. *Black*, 76 W. Va. 685, 694.

In *Regina* v. *Garrett*, Dearsly's Crown Cases Reserved, 232, 241, Lord Campbell said:

"I do not proceed upon the ground that the offense was committed beyond the jurisdiction of the Court"—which was the fact

there—"for if a man employ a conscious or unconscious agent in this country, he may be amenable to the laws of England, although at the time he was living beyond the jurisdiction."

It will be found among the earlier cases that the principle is sometimes qualified by saying that the person out of the State can not be held for a crime committed within the State by his procuration unless it is done by an innocent agent or a mechanical one; but the weight of authority is now against such limitation. Generally the cases show that jurisdiction exists to try one who is a conspirator whenever the conspiracy is in whole or in part carried on in the country whose laws are conspired against. In *Hyde* v. *United States*, 225 U. S. 347; *Brown* v. *Elliott*, 225 U. S. 392, the question was whether a conspiracy could be tried, not where it was carried on, but in a place where only an overt act under it was performed by one conspirator. There was strong diversity of opinion among the Justices though a majority sustained the venue following the Court of King's Bench in *Rex* v. *Brisac and Scott*, 4 East, 164. But we have no such ground for difference here for the conspiracy was being carried on all the time by communications exchanged between the conspirators in San Francisco and on the high seas just beyond the three-mile limit near San Francisco Bay and the overt acts were in both places.

The whole question was fully considered from the international standpoint in a learned opinion by John Bassett Moore, now Judge of the Permanent Court of International Justice, while he was Assistant Secretary in the State Department, to be found in Moore's International Law Digest, Vol. 2, p. 244. The report was made in view of controversy between this Government and the Government of Mexico in reference to the arrest and imprisonment of one Cutting for a libel charged to have been committed by Cutting in the publication of an article in a newspaper in the State of Texas. The prosecution was under Article 186 of the Mexican Penal Code. That code provided that penal offences committed in a foreign country against a Mexican might be punished in Mexico. Our government maintained that it could not recognize the validity of a prosecution in Mexico of an American citizen who happened thereafter to be there, for an offense committed in the United States, merely because it was committed against a Mexican. In the course of the examination of this question, Mr. Moore, recognizing the principle already stated, said:

"The principle that a man who outside of a country wilfully puts in motion a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminal acts in that manner has made this principle one of constantly growing importance and of increasing frequency of application.

"Its logical soundness and necessity received early recognition in the common law. Thus it was held that a man who erected a nuisance in one county which took effect in another was criminally liable in the county in which the injury was done. (Bulwer's case, 7 Co. 2 b. 3 b.; Com. Dig. Action, N. 3, 11.) So, if a man, being in one place, circulates a libel in another, he is answerable at the latter place. (Seven Bishops' Case, 12 State Trials, p. 331; Rex *v.* Johnson, 7 East, 65.)"

After referring to the doctrine of innocent agent and its dependence on the distinctions between accessories and principal in crime, Judge Moore says (p. 249):

"But, as has been shown, the doctrine of accessoryship has been abolished by statute in many jurisdictions in which it formerly prevailed, and is condemned by many writers as unnecessary and unsound. Referring to accessories before the fact, Mr. Bishop says:

"'The distinction between such accessory and a principal rests solely in authority, being without foundation either in natural reason or in the ordinary doctrines of the law. The general rule of the law is, that what one does through another's agency is to be regarded as done by himself.'

"And on this point he cites Broom's Legal Maxims, 2 ed., p. 643; Co. Lit. 258a; and the opinion of Hosmer, C. J., in Barkhamsted *v.* Parsons, 3 Conn. 1, that 'the principal of common law, *Qui facit per alium, facit per se*, is of universal application, both in criminal and civil cases.'"

The overt acts charged in the conspiracy to justify indictment under section 37 of the Criminal Code were acts within the jurisdiction of the United States, and the conspiracy charged, although some of the conspirators were corporeally on the high seas, had for its object crime in the United States and was carried on partly in and partly out of this country, and so was within its jurisdiction under the principles above settled.

We have thus disposed of the chief objections. There are some objections on the admission of evidence, one with respect to the receipt of a telegram charged by the Government to be from Be-

langer, a defendant, sent to Dorgan, his co-director of the Canadian corporation which owned the cargoes of liquor; another objection based on the receipt in evidence of eighty-three dollar bills cut in two with liquor orders written on them, associated in the evidence with Quartararo and charged to show that he had used them for the purpose of sending them out to the officers of the rum runners to identify his agents for the safe delivery of the liquor. Another was as to the evidence of a witness who pleaded guilty and who was permitted to testify that at the instance of Quartararo, shown by the evidence to be the chief operator in the conspiracy, he brought into San Francisco liquor in small boats, not only from the Quadra, the Coal Harbour and the Malahat, controlled by the Canadian corporation, but many times during the period of the conspiracy alleged in the indictment also from a vessel called the Norburn, without the direct evidence that the Norburn was controlled by the same Canadian corporation, and therefore that it was irrelevant evidence of another conspiracy rather than the one charged. With respect to all these instances, we think that there was sufficient probable connection with the conspiracy already shown to allow the items of evidence to be introduced, leaving to the jury the weight of it, but that even if in any of such instances there was error, they were merely cumulative proof of the conspiracy which was practically undenied and their admission was harmless.

The judgment of conviction of the Court of Appeals is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.